

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

Case No. 15-20217

Hon. Stephen J. Murphy, III

7 D-1 DAVID HANSBERRY

8 Defendant.

/

9 **SENTENCING**

10 BEFORE THE HONORABLE STEPHEN J. MURPHY, III  
11 United States District Judge  
12 Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan 48226  
Wednesday, February 22, 2017

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22  
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1	<u>TABLE OF CONTENTS</u>	
2		<u>Page</u>
3	<u>OBJECTIONS TO THE PRE-SENTENCE REPORT:</u>	
4	<u>Government Objection Numbers 1 and 2:</u>	
5	Comments by the Court.....	13
6	Comments by Mr. Buckley.....	13
7	Comments by Mr. Harrison.....	16
8	Ruling by the Court.....	19
9	<u>Defense Objection Numbers 1 and 2:</u>	
10	Comments by the Court.....	20
11	<u>Defense Objection Numbers 3(1) and (2):</u>	
12	Comments by the Court.....	22
13	Comments by Mr. Harrison.....	23
14	Comments by Mr. Buckley.....	24
15	Further Comments by Mr. Harrison.....	27
16	Ruling by the Court.....	28
17	Further Comments by the Court.....	30
18	<u>Defense Objection Number 3(3):</u>	
19	Comments by the Court.....	31
20	Comments by Mr. Harrison.....	32
21	Comments by Mr. Buckley.....	32
22	Ruling by the Court.....	33
23	<u>Defense Objection Number 3(4):</u>	
24	Comments by Mr. Harrison.....	34
25	Comments by Mr. Buckley.....	35
	Ruling by the Court.....	36
	<u>Defense Objection Number 5:</u>	
	Comments by the Court.....	38
	<u>SENTENCING:</u>	
	Allocution by Mr. Harrison.....	42
	Allocution by Defendant David Hansberry.....	46
	Allocution by Mr. Buckley.....	68
	Comments/Sentencing by the Court.....	73

1		<u>Page</u>
2	<u>MOTION FOR REMAND:</u>	
3	Motion by Mr. Buckley.....	78
4	Response by Mr. Harrison.....	79
5	Ruling of the Court.....	80

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EXHIBITS13 IdentificationOfferedReceived

14 NONE

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1 Detroit, Michigan

2 Wednesday, February 22, 2017

3 — — —

4 (Proceedings commenced at 10:16 a.m., all parties  
5 present)

6 THE CASE MANGER: The Court calls Case No. 15-20217,  
7 United States of America versus David Hansberry and Bryan  
8 Watson.

9 Counsel, please state your appearances for the  
10 record.

11 MR. BUCKLEY: Good morning, Your Honor. May it  
12 please the Court, Michael Buckley appearing on behalf of the  
13 United States. Seated with me are our paralegal, Mrs. Maria  
14 Koch, and the case agent, Michael Fitzgerald of the FBI.

15 THE COURT: Okay. Good morning to you.

16 AGENT FITZGERALD: Good morning, Judge.

17 MR. HARRISON: Good morning, Your Honor. Michael  
18 Harrison appearing on behalf of David Hansberry together with  
19 Joshua Kushnereit.

20 MR. FISHMAN: Good morning, Judge. Steve Fishman on  
21 behalf of Mr. Watson.

22 THE COURT: Okay. Good morning to you as well, and  
23 good morning to all the counsel. Sorry for being a short bit  
24 late, and thanks for being on time.

25 We're going to do sentencings for Mr. Hansberry and

1 Mr. -- Mr. Watson and we're going to start with Mr. Hansberry,  
2 so let me invite Mr. Buckley and Mr. Harrison to come forth and  
3 we can talk about legal issues to begin with.

4 Before I do that, the Court received three letters  
5 that were literally thrown on the courthouse steps from some  
6 citizens, and the citizens' names are Shawniqua Smith, Martiese  
7 Lindsay and I believe K.C. Smith, and I've read all this. And  
8 essentially these letters suggest that the officers made  
9 criminal choices and seek the highest punishment available to  
10 the officers. Have both counsel gotten copies of these?

11 MR. BUCKLEY: I have not. Thank you, Your Honor.

12 MR. HARRISON: No, Your Honor.

13 THE COURT: Okay. Well, I have extra copies, and I'm  
14 going to pass these out to you and let you read them before  
15 we -- before we enter any sentences. But I've got one for the  
16 United States and one for Mr. Harrison, if you would pass those  
17 out, and if you hang on to those, I'll get you copies on the  
18 break, but those are my only two copies, okay?

19 MR. BUCKLEY: Thank you, Judge.

20 MR. HARRISON: Thank you, Your Honor.

21 THE COURT: All right. Thank you both very much. So  
22 you can read those before we go to allocution.

23 I received a letter from Tharadrous White on behalf  
24 of Mr. Hansberry. I received a number of letters that were  
25 relevant to both defendants that I read in support of their

1 character and lesser sentencing, a large stack. I know that  
2 Mr. Harrison supplied those all to the Court.

3 You've seen all those, correct, Mr. Buckley?

4 MR. BUCKLEY: I have. Thank you, Your Honor.

5 THE COURT: Okay. All right. And then I have an  
6 exhibit, which I'm not exactly sure how it got in the file or  
7 where it came from, but it's a internal office memorandum from  
8 the Internal Affairs Unit dated April 15, 2015. I haven't  
9 considered this and I frankly don't know why it's there, but it  
10 appears to be an exhibit to a memo or something. So can  
11 anybody give any me guidance on this? It's from  
12 Commander Brian Stair -- excuse me, from Sergeant Dietrich  
13 Lever to Commander Brian Stair, and it's Exhibit No. 1,  
14 Inter-Office Memorandum from Internal Affairs.

15 MR. HARRISON: May I, Your Honor?

16 THE COURT: Yeah, of course.

17 MR. HARRISON: Your Honor, I believe that was  
18 attached to Defendant Hansberry's Sentencing Memorandum as  
19 Exhibit I.

20 THE COURT: Okay.

21 MR. HARRISON: And it was an exhibit that was  
22 provided to the Court for consideration of --

23 THE COURT: Okay.

24 MR. HARRISON: -- the arguments made in the  
25 Sentencing Memorandum.

1 THE COURT: Okay. All right. Very good. All right.  
2 Very good. Thank you. I -- I have it; it just wasn't -- it  
3 wasn't attached.

4 So there are a number of -- a number of letters that  
5 I have read attached to Mr. Harrison's Sentence Memorandum,  
6 numbers -- pages 1 through 27, from police officers and --  
7 and -- and the like.

8 So I also have the United States Sentence Memorandum,  
9 its Exhibits A, B and C and D, which include transcripts and an  
10 FBI report of Agent Fitzgerald.

11 So I have Defendant Hansberry's Sentencing --  
12 Sentencing Memorandum and I have the officer, William  
13 Hampstead's, report, so I think I have everything. Am I  
14 missing anything that I should have -- I've read all this. Is  
15 there anything I haven't gotten that I should be aware of or --

16 MR. HARRISON: Well, Your Honor, there -- there was a  
17 reply memorandum filed on behalf of Defendant Hansberry to the  
18 government's motion, and on that, for purposes of the record, I  
19 do need to make a correction to the Court.

20 THE COURT: I don't know if I have a printed copy of  
21 that, but I can -- I can get it online and determine whether or  
22 not I've read that. When did you file that, Mr. Harrison?

23 MR. HARRISON: That was filed Monday, I believe late  
24 morning, of this week contemporaneous -- or not contemporaneous  
25 but soon followed by motion for a new trial that was joined by

1 co- -- the co-defendant.

2 THE COURT: All right. I've got the motion. The  
3 government hasn't had any chance to respond to that so we're  
4 not going to deal with that right now.

5 But let me try to get your reply to the government's  
6 Sentence Memorandum because I haven't looked at that, to be  
7 quite honest with you.

8 (Brief pause)

9 Okay. February 20, 2017, docket number 167, Response  
10 to Government's Sentence Memorandum. I have that in front of  
11 me.

12 MR. HARRISON: Your Honor, for purposes of the  
13 record, may I inform the Court and -- and for the Court, may I  
14 inform you as to an error that I made in that memorandum --

15 THE COURT: Yeah.

16 MR. HARRISON: -- at this time?

17 THE COURT: What page?

18 MR. HARRISON: Thank you, Judge. Your Honor, in that  
19 memorandum, I -- although not the crux of what was being  
20 argued, the argument had to do with the credibility of Gary  
21 Jackson for purposes of attributing money for the guidelines  
22 using his testimony.

23 But in there I questioned the timing of the FBI  
24 report, which I believe was January 12th. I didn't -- as I  
25 explained in there, I didn't understand how the report could

1 have been generated prior to my Sentencing Memorandum being  
2 filed in February.

3 I since then, actually just last night, reviewed my  
4 objection, my original objections to the Pre-Sentence  
5 Investigation Report, and noted that I had made the same error  
6 describing the participants, the conversation. The  
7 participants were actually Gary Jackson and Frederick Tucker,  
8 and I had made the error both in the Sentencing Memorandum and  
9 in the previous objections that the conversation was between  
10 Gary Jackson and Calvin Turner, and there also was a typo as to  
11 a.m. versus p.m.

12 I brought this to Mr. Buckley's attention this  
13 morning, my -- my realization that I made that error, and I  
14 apologized for any inference that may have been brought from  
15 that. I did in -- in -- in there suggest that perhaps it was a  
16 typographical error as to -- as to the date in the FBI 302.  
17 But I extended my apologies to Mr. Buckley and to -- indirectly  
18 to Mr. -- Agent Fitzgerald, and I apologize to the Court for  
19 that oversight.

20 Otherwise the reply memorandum, the crux of it is the  
21 credibility of Gary Jackson for purposes of attributing acts  
22 of -- of conduct that should be relevant conduct for purposes  
23 of -- of 2B1.1(b) (1) (H), which would be the amount of money  
24 involved in the alleged -- or the -- actually not alleged --  
25 the conspiracy.

1           THE COURT: So -- so it looks like starting bottom of  
2 page 3, top of page 4, the error is that you're suggesting  
3 there was recordings that captured Gary Jackson and Calvin  
4 Turner. That's an error. The -- the fact, presumably the FBI  
5 report and my recollection of what went on in the trial of the  
6 case, was that the conversation was between Gary Jackson and  
7 Fred Turner, otherwise known as Deke, and you -- you are --  
8 are -- are making that correction now in open court, right?

9           MR. HARRISON: Well, Judge, actually it's more than  
10 that. I made the correction I believe in quoting the  
11 transcript of Gary Jackson, which was page 117 of his -- of his  
12 testimony, lines 1 to 4 and lines 18 to 19. In court I  
13 correctly identified the call by time and participants, but in  
14 my subsequent objections to the Pretrial Report and in my  
15 Sentencing Memorandum, I mischaracterized the parties.

16           And beyond that, I suggested that -- not realizing I  
17 had made the prior mistake, I suggested that I didn't  
18 understand how the report could have been generated in January  
19 because I made the mistake in the Sentencing Memorandum filed  
20 in February, not realizing I made the same mistake in November  
21 in my objections.

22           THE COURT: You got -- you got way out ahead of  
23 yourself and -- and made arguments and said things in reliance  
24 on -- on something that you later learned was mistaken, right?

25           MR. HARRISON: I did.

1 THE COURT: All right. Okay. All right. Well, I'll  
2 note the correction in the -- in the document. Again, the  
3 document was apparently filed on a federal holiday two -- two  
4 days ago, so candidly I knew there was a motion but I haven't  
5 seen that reply. I'm going to have to read it more thoroughly,  
6 and I'll do so in light of the correction you just made.

7 But Mr. Buckley, do you want to speak to this at all?

8 MR. BUCKLEY: Thank you, Judge. Just briefly, to the  
9 extent Mr. Harrison has apologized for maligning my character  
10 for integrity, I accept his apology in that regard.

11 THE COURT: Okay. Well, I -- I did see that there's  
12 some, you know, personal statements made on -- on -- on page 4,  
13 and I find that to be uncommon between counsel, but it appears  
14 that it was driven by, as I said before, Mr. Harrison getting  
15 ahead of himself and making a mistake. He called that out in  
16 open court, apologized, Mr. Buckley accepted the apology. So I  
17 don't think we have any more issue about the reply, do we?

18 MR. HARRISON: Not on my behalf, Your Honor.

19 MR. BUCKLEY: No, not at this time, Judge.

20 The government is in the process of responding to the  
21 motion for a new trial, which I believe should be denied on  
22 both procedural and substantive grounds, but we're preparing a  
23 response.

24 THE COURT: Well, I'm not going to say anything about  
25 that other than that I'll read everything when it's fully

1 briefed, and if we need to have a hearing, we will, and if we  
2 don't, we'll just grant or deny the motion, okay?

3 MR. BUCKLEY: Yes, sir. Thank you.

4 THE COURT: All right. We'll go from there. All  
5 right. Good. Well, I think we're ready to get to work.

6 The Court has recited everything that it has in front  
7 of it. I am going to take a minute before -- we'll take a  
8 short break so I can read the reply that was filed on the 20th,  
9 acquaint myself with that.

10 But let's talk about these government objections. I  
11 read them extensively. I looked at the law in support and  
12 everything else. My sense, Mr. Buckley, of Objection Number 1  
13 and Number 2 is that with regard to Number 1, you want Mr.  
14 Hansberry's amount of loss increased by \$862,000 because under  
15 the law, acquitted conduct, if proven by a preponderance of the  
16 evidence, can be -- can be counted by the Court.

17 And then with regard to Objection Number 2, it seems  
18 that you support and -- and corroborate that argument with the  
19 testimony of Lamar Calhoun, among others. And then I believe  
20 you want a -- an additional \$54,000 included, for a total of  
21 1,000 -- I'm sorry, you want \$996,000 extra on the basis of  
22 that testimony as well as the \$54,000 that I mentioned from  
23 Calhoun, for a total of \$1,050,000 as the loss figure.

24 Doing that would get us to a overall Offense Level of  
25 40 and a proposed guideline range, according to the government,

1 of 292 to 365 months.

2 And if you'd like to correct or illuminate me on  
3 anything I said and augment your objection, you go right ahead  
4 and do so now.

5 MR. BUCKLEY: Thank you, Your Honor.

6 May it please the Court, the Court's quite correct  
7 with regard to acquitted conduct. The cases cited in the  
8 government's pleadings accurately state that the Supreme Court  
9 has held that conduct underlying acquitted counts may be  
10 considered by the Court in fashioning sentence if they were  
11 proved by a preponderance of the evidence at sentencing.

12 And, Judge, my point is simply this. This Court sat  
13 through a weeks-long trial. The Court heard testimony  
14 concerning six separate rips during which the defendants agreed  
15 to steal drugs and drug proceeds from drug dealers. I  
16 respectfully suggest to the Court that the testimony of these  
17 witnesses was compelling and -- and it appeared to be credible  
18 and it was corroborated in various ways.

19 And one thing I'd ask the Court to consider is that  
20 there were six separate rips charged, and although those counts  
21 were acquitted, none of those drug dealers knew each other, but  
22 all of them said that they had been wronged by police officers  
23 and by these two defendants, these same two police officers.

24 Furthermore, Judge, the -- the acquitted conduct was  
25 corroborated by an undercover recording captured by former

1 police officer and cooperating witness Arthur Leavells. Arthur  
2 Leavells began to cooperate with the FBI. And during a meeting  
3 with Mr. Hansberry on September 7th of 2014, Mr. Hansberry,  
4 without any prompting, starts reminiscing. He starts  
5 reminiscing about some of the search warrant executions he and  
6 his crew, including Mr. Leavells, conducted. And along with  
7 hundreds and hundreds, if not over a thousand, search warrants  
8 executed by Hansberry's crew, the search warrant executions  
9 that he would bring up, Judge, years later relate to these  
10 acquitted counts. He mentions by name Renee Williams, Count 3.  
11 He mentions by name Nicholas Simmons, Count 4. He mentions  
12 indirectly the house where Knuck, Arthur Knuckles, set up those  
13 guys that ran in the basement. That was Christopher Wilson,  
14 Judge, Count 5 I believe that was.

15 And if the Court would like to hear it, I'm prepared  
16 to play a portion of -- of that recording. I've provided  
17 transcripts of the clips I plan to play to defense counsel this  
18 morning. And I know the Court presided over trial, I know the  
19 Court was attentive. We're prepared to play a couple clips  
20 today, Judge, and they total about 21 or 22 minutes. But --

21 THE COURT: I don't think that's necessary. I mean  
22 if you would insist or have a legal basis for playing tapes,  
23 I'd -- I'd go along with you, but I have a -- frankly, with all  
24 due respect, I have a very, very good handle on the testimony.  
25 I've looked at some transcripts myself, I'm -- I've read all

1 your memos, and I -- believe me, I remember the testimony in --  
2 in -- in the trial. So that's what I would -- and I -- and  
3 I -- I -- I think in -- in terms of -- in terms of time and  
4 efficiency and -- and the Court's calendar, I -- I would  
5 probably say we don't need to do that, but if you insist or  
6 have a legal -- legal reason, we -- we can do that.

7 MR. BUCKLEY: Your Honor, it's your courtroom and  
8 I'll proceed in any fashion that the Court deems appropriate.

9 THE COURT: Okay. I -- I guess I'd prefer to proceed  
10 in the fashion that I recollect the -- all the testimony you  
11 just referenced, and -- and we've seen transcripts and I don't  
12 think we need to have those 21 minutes worth of tapes played  
13 this morning. That would be my --

14 MR. BUCKLEY: I understand, Judge, and I accept that.

15 THE COURT: Okay.

16 MR. BUCKLEY: So lastly, Judge, with regard to that  
17 meeting, Hansberry does say, "If they had Kemp and Deke, it  
18 would be so easy. What they need to be up on my phone for?  
19 You can just tap him and just come in there and to talk to  
20 you." Kemp was Calvin Turner who did testify at trial, and  
21 Deke was Fred Tucker who did testify at trial.

22 So it's our position, Your Honor, that the acquitted  
23 conduct was proven by more than a preponderance of the  
24 evidence, and we would ask the Court to include it in  
25 calculating the appropriate guidelines range.

1 THE COURT: Okay. Excellent. Thank you very much.  
2 Mr. Harrison, of course you may respond to any and  
3 all of that.

4 MR. HARRISON: Well, thank you, Your Honor. Your  
5 Honor, it's true, as the government correctly notes, that  
6 *United States vs. Watts*, the Supreme Court in a per curiam  
7 opinion, and the Sixth Circuit in *United States vs. White*, the  
8 Court is free to consider acquitted conduct, Your Honor.

9 But, however, we did cite some case law to the Court.  
10 In a denial of writ of certiorari, three of the justices, I  
11 believe it was Scalia who wrote the opinion and it was joined  
12 by Clarence Thomas and Justice Ginsberg, were very concerned in  
13 the case that we cited that the Court at that time did not take  
14 this issue up for further clarification after the Court's  
15 decision that made the guidelines non-mandatory to the Court.  
16 They were concerned that judicial fact finding could fly in the  
17 face of the Fifth and Sixth Amendment. I believe the issue is  
18 ripe and still may be addressed.

19 But it's not a matter of whether this Court can  
20 attribute acquitted conduct but whether it should under  
21 circumstances such as these where virtually all of the wrongful  
22 conduct that was alleged was charged in specific counts, and  
23 those counts were unequivocally tossed out and discredited by  
24 the jury in their verdict.

25 And out of respect for the defendant's Fifth and

1 Sixth Amendment rights, out of respect for the jury's verdict  
2 itself, Your Honor, I would respectfully suggest that the Court  
3 shouldn't do that, especially when we look at the witnesses  
4 that we're talking about. These were witnesses that were all  
5 repeatedly impeached. These were witnesses that were mostly  
6 all over the place in terms of the money. I remember to -- one  
7 specific instance, Nicholas Simmons, how many different -- how  
8 many different versions of how much money was in that bag did  
9 we hear? "300,000. 200,000. 250. I don't know. I took some  
10 out for my birthday. I'm trying to -- I'm trying to add money  
11 on to get the man." We heard all sorts of things about that.

12 But, you know, all of these people, Williams,  
13 Simmons, Wilson, Browning, Tucker, Vasquez, this is all  
14 acquitted conduct, Your Honor, and acquitted because, I would  
15 suggest, the very testimony that the Court received and the  
16 jury received was inherently incredible.

17 I would go beyond that, Your Honor, and -- and, as I  
18 have in my memorandum and my reply brief, suggest to the Court  
19 that the attribution of any money under these circumstances is  
20 inappropriate or at least should not be done under these  
21 circumstances.

22 Beyond the additional moneys, the I believe it's  
23 996,000 that the government wishes to have you attribute,  
24 probation in the Pre-Sentence Investigation Report attributed  
25 essentially the -- the difference between the \$3 million from

1 the 2010 truck seizure that Mr. Jackson claimed was on the  
2 truck and the amount seized together with the -- I believe it  
3 was -- I believe it was the claim of Calvin Pulley I believe  
4 for an additional amount of money.

5 Judge, we would object to the inclusion of that if --  
6 as I've -- I've cited some transcript from Mr. Jackson. Mr.  
7 Jackson begrudgingly admitted on cross-examination that he  
8 personally didn't know how much money was there. I've provided  
9 the Court with other examples of why Mr. Jackson is not a  
10 witness who should be relied upon for much of anything.

11 And the only testimony we had about allegedly money  
12 being taken from that truck was his testimony and this  
13 incredible testimony from Officer Leavells, a man who admitted  
14 that he had on numerous, numerous occasions sworn to tell the  
15 truth and perjured himself to other judges and to prosecutors,  
16 who claimed that he saw another officer with big things under  
17 his shirt. The Court may remember we saw photographs of those  
18 packages of money, and the idea that the money could have been  
19 under an officer's shirt given the size of the bundles is  
20 ridiculous.

21 THE COURT: Okay.

22 MR. HARRISON: Also the Court may remember there was  
23 testimony that there were multiple law enforcement agencies  
24 that responded to that scene almost immediately.

25 And I would ask the Court on behalf of Defendant

1 Hansberry to attribute no money under 2B1.1(b) (H) .

2 THE COURT: All right. We're going to get to that in  
3 a minute, but any other legal argument on the objection that  
4 Mr. Buckley's lodged to the Pre-Sentence Report? Because I'm  
5 ready to rule on that.

6 MR. HARRISON: No other legal argument, Your Honor.

7 THE COURT: Okay. All right. Look, my sense of the  
8 case is, quite simply, that Mr. Buckley may very well be right.  
9 The -- the case was extremely ably presented and contested, and  
10 there was evidence that was indeed corroborated. There was  
11 independence of actors. There -- there was in many ways all  
12 the government could do to prove the -- the substantive counts,  
13 but the jury acquitted on those counts, and why they did that,  
14 I don't know.

15 The -- the issue Mr. Buckley raises, quite honestly,  
16 was addressed by Mr. Harrison and comes down to me as a very  
17 straightforward legal issue. And I am and have been -- and I  
18 read this case when it came out because I was very concerned  
19 and interested that a situation like this one might come up --  
20 convinced by the concerns of Justices Scalia, Thomas and  
21 Ginsberg about whether or not the Sixth Amendment is violated  
22 when courts impose sentences that but for a judge-found fact  
23 would be reversed for substantive unreasonableness.

24 My concern is that agree or disagree, and Mr. Buckley  
25 agrees and Mr. Harrison doesn't because that's their respective

1 roles, I am a manager of the courtroom. I am a ruler on the  
2 evidence. I am not a finder of fact in a criminal trial, and I  
3 don't think it's for me to find facts, even though they were  
4 proven, I do believe, by a preponderance of the evidence. And  
5 even more so, it's not my job to find facts. It's the jury's  
6 job to find facts. They did not find facts to support  
7 conviction on the substantive counts, and therefore I am not  
8 going to consider conduct and I'm going to, with respect for  
9 the compelling way they were presented, overrule the  
10 government's objection and not impose any additional guidelines  
11 calculations on the basis of them. So that will be the Court's  
12 ruling on government Objections Number 1 and Number 2.

13 Let's get then to the objections of the defendant and  
14 try to streamline these if we can. Objection Number 1 and  
15 Objection Number 2 by Mr. Harrison essentially take issue with  
16 the information set forth in paragraphs 6 through 8, 9 through  
17 26 and paragraph 27, and I have -- I have encountered these  
18 types of situations before. The -- the simple fact of the  
19 matter is that the probation officer wrote the version of the  
20 offense based on the information that was supplied by the  
21 government. The defendant was interviewed by the probation  
22 officer and had an opportunity to give a -- his side of the  
23 story.

24 I don't find anything in the paragraphs that Mr.  
25 Harrison objected to either unstated by the evidence or not

1 touched upon within the case. It's certainly Mr. Harrison's  
2 job and obligation on behalf of his clients to -- client to  
3 object to materials that he don't -- he doesn't believe would  
4 be factual, but the probation officer's work is supported by  
5 fact and the materials supplied by the government.

6 I would note the objections, incorporate them into  
7 the Pre-Sentence Report by means of the addendum that was  
8 supplied by Mr. Hampstead, and state that the probation  
9 officer's work is contested -- excuse me, correct but highly  
10 contested by the defense.

11 And I don't think any of these things necessarily go  
12 to the -- the -- the next objections I'm going to get to go to  
13 the overall compilation of the guidelines score, but I would  
14 note the objections on the factual matter, not sustain the  
15 objection or deny it but allow the report to continue to  
16 contain the objections so that the Bureau of Prisons and the  
17 Sentencing Commission know the overall thrust of what the  
18 government and the defense believe was the offense conduct  
19 here. And that would be my ruling on Objection Number 1 and  
20 Number 2.

21 Anything else beyond that, Mr. Harrison?

22 MR. HARRISON: No, Your Honor. Thank you.

23 THE COURT: Mr. Buckley, do you want to speak to any  
24 of those matters?

25 MR. BUCKLEY: No, sir. Thank you, Your Honor.

1           THE COURT: Okay. All right. Let's get then to the  
2 heart of the matter. Objection Number 3, two-level enhancement  
3 under 2C1.1 -- all right. Here's the issue on all these things  
4 that I can tell. The defendants were con -- convicted of  
5 conspiracy to extort. A conspiracy is an agreement with a  
6 number of -- well, with -- with -- with overt acts. We know  
7 the instructions said that. We know that the jury took that  
8 seriously.

9           Mr. Harrison wants to say that the conspiracy -- I  
10 don't want to put words in your mouth and you'll get to speak  
11 to this, but Mr. Harrison wants to say that the conspiracy was  
12 an agreement, maybe one or two things were done that would  
13 support conviction on that count, but these multiple acts of  
14 extortion, the amount of loss, including some of the -- the  
15 moneys that -- some of the co-defendants who were involved in  
16 the acquitted conduct but necessarily had to be involved in  
17 conviction on Count 1 were -- do not support the enhancements  
18 under 2C1.1(b) (1) or 2B1.1(b) (1) (H) .

19           I respect the objection and I'm -- I'm -- I've read  
20 everything. I just don't know how we get to the point where we  
21 say there was a conspiracy and overt acts but there was no --  
22 especially in wake of the entire evidentiary record lodged by  
23 the government, how we say there was no additional evidence  
24 beyond an agreement and -- and -- and -- and maybe some sort of  
25 overt act to carry it out that wouldn't support these

1 objections. Go ahead, Mr. Harris -- or enhancements. Go  
2 ahead, Mr. Harrison.

3 MR. HARRISON: Thank you, Your Honor.

4 Well, you know, again, I think we're left to  
5 speculate, and unfortunately it puts the Court in the -- the  
6 same difficult position that it -- that the Court was in in  
7 looking at acquitted conduct because, of course, the  
8 instruction requires an overt act in furtherance of the  
9 conspiracy. It doesn't require a substantive crime be  
10 committed by anyone.

11 And my concern is that whereas here virtually all of  
12 the imagined crimes were charged substantively and rejected by  
13 the jury, that the Court is left to -- to speculate what --  
14 what -- what specific overt acts and how many were committed,  
15 you know, but the -- the enhancement of two levels requires  
16 more than one. And, Judge, I -- I -- again, I think that the  
17 Court has to reach conclusions here that may conflict with the  
18 verdict that we received and that I know this Court and I  
19 certainly respect.

20 With regard to the second one, 2B1.1(b)(1)(H), the  
21 amount of money, again, as I argued earlier, I'm concerned that  
22 it would require, to get where probation got, basically to  
23 accept Gary Jackson and I suppose Arthur Leavells' testimony  
24 that there was this 8 or \$900,000 stolen from the truck in  
25 2010.

1           And when I -- when I look closely at the testimony  
2   that was received, the Court -- you know, I agree with the  
3   Court. You heard all the evidence, Judge, you heard it all,  
4   and you -- you probably know it -- know it as well or better  
5   than any of us. But I hope, Judge, that you struggle with  
6   accepting Mr. Jackson's testimony with regard to the amount of  
7   loss when he himself admitted on cross-examination, again, that  
8   he didn't really even see the money being packed on the truck.  
9   He's assuming that it was 3 million, but he admitted that the  
10   money was turned over to the cartel ten days before it was  
11   loaded on the truck. It was out of his possession and control.  
12   It requires not only that Mr. Jackson speculate but then, on  
13   top of that, this Court to speculate as to the amount of money  
14   that was there. And while the Court, of course, is free to do  
15   that, Judge, I would just caution that it would be  
16   inappropriate under these circumstances.

17           THE COURT: Okay. Let me -- let me stop you there.  
18   I think you've spoken to Objection Number 3, sub-paragraphs 1  
19   and 2, which is exactly where I'm at. And I'd like to hear Mr.  
20   Buckley's response, unless you have anything else to say.

21           MR. HARRISON: I don't. Thank you, Your Honor.

22           THE COURT: Go ahead, Mr. Buckley.

23           MR. BUCKLEY: Thank you, Your Honor.

24           Very briefly, with -- with regard to -- to Gary  
25   Jackson, Mr. Harrison's recollection of his testimony and,

1 again, the slant of it is far different than mine. Gary  
2 Jackson, Judge, never wavered, never wavered on the fact that  
3 the money shipment to the cartel was \$3 million. That  
4 testimony was corroborated, Judge, by prior consistent  
5 statements that he made to Calvin Turner, and there were  
6 statements of Arthur Leavells that were recorded made to  
7 Hansberry saying, "Little always said it was 3 million." He  
8 was adamant. So, Your Honor, there were prior consistent  
9 statements which corroborate Gary Jackson's position that it  
10 was \$3 million. I don't believe he said the money was turned  
11 over to the cartel ten days before the shipment. If he did, he  
12 did. But in any event, he has always been steadfast in his  
13 assertion that it was \$3 million.

14 And, Judge, to the point, I don't think that this  
15 decision for the Court on this enhancement for more than one  
16 act of extortion is as difficult as Mr. Harrison would portray  
17 it because I'm going to give the Court some examples of acts of  
18 extortion which were wholly unaffected by the acquittals. One  
19 obviously was the -- the theft of the nearly \$1 million by the  
20 defendants on July 26th of 2010.

21 Mr. Harrison's also forgotten the testimony of Lamont  
22 Calhoun. Lamont Calhoun, the Court will recall, was  
23 wheelchair-bound; he had been shot off his motorcycle on the  
24 Lodge Freeway. And he testified about a rip he participated in  
25 of a man named Hightower on Monte Vista Street. And he said

1     that after -- after Mr. Watson raided the Monte Vista home, and  
2     Mr. Watson was a member of Mr. Hansberry's crew at that time,  
3     Hightower pressured Calhoun, said, "Hey, I want money for the  
4     half a kilo that I fronted you." And Mr. Calhoun testified  
5     that he said to Mr. Watson, "I need something to show  
6     Hightower." And if the Court will recall, Mr. Watson,  
7     accompanied by Mr. Hansberry, introduced as Watson's boss, gave  
8     Lamont Calhoun the fake Snowden search warrant with the forged  
9     judge's signature and a fake name of a police officer as the  
10    affiant.

11           So you have the \$3 million money seizure. We have  
12    the Monte Vista rip.

13           Also Lamont Calhoun testified that at one point  
14    Hansberry, Watson and he planned a ten-kilo rip and that Mr.  
15    Hansberry suggested the use of a GPS tracker on the victim  
16    dealer's car. That would be three acts of extortion.

17           And then, Judge, we have the Calvin Pulley two-kilo  
18    rip on Ohio Street on March 3rd of 2013. And if the Court will  
19    recall, that was the rip which the FBI was able to demonstrate  
20    that the defendants placed two dummy kilos, two sham kilos of  
21    cocaine on evidence and that the -- the two kilos stolen from  
22    Calvin Pulley were sold by Arthur Knuckles.

23           So, Judge, that's at least four acts of extortion. I  
24    think the Court can also consider some of the acts based on  
25    acquitted conduct, but the Court need not do that.

1 THE COURT: Okay. All right. You know --

2 MR. HARRISON: May I -- may I briefly respond, Your  
3 Honor?

4 THE COURT: Yeah, of course. Go right ahead.

5 MR. HARRISON: Just -- thank you, Judge.

6 THE COURT: Go right ahead.

7 MR. HARRISON: Judge, just quoting from our  
8 Sentencing Memorandum, with regard to the ten days, Answer,  
9 Gary Jackson, "10 days before the money was already accounted  
10 for and pushed over to the cartel. Question, "Okay. And so  
11 you gave the 1.5 million to the cartel some days before the day  
12 the money was forfeited?" Answer, "True." That's Gary Jackson  
13 transcript, page 99, lines 4 through 8.

14 So again, Judge, in terms of Jackson, the most -- the  
15 most money he had possession and control over was 1.5. He gave  
16 that to the cartel ten days before. The Court may recall, the  
17 other 1.5 was cartel-generated money. Jackson testified he  
18 wasn't actually physically present when they were loading it  
19 and counting it. It's very speculative, Judge.

20 And then in terms of the overt acts that Mr. Buckley  
21 has addressed, I would just suggest to this Court that the  
22 Court heard the testimony as Lamont Calhoun, and Mr. Calhoun I  
23 believe expressly said he didn't have dealings with Mr.  
24 Hansberry beyond talking about things -- or the day -- the  
25 question of the search warrant.

1 THE COURT: Okay. All right.

2 MR. FISHMAN: Judge, excuse me for one second. I  
3 don't mean to interrupt. If the Court is prepared to rule on  
4 the Gary Jackson 900 and some thousand, would it be possible  
5 for me to be heard on that before you do that, or are you going  
6 to defer that ruling until --

7 THE COURT: I'm going to defer that because I -- I  
8 might make a different ruling in -- in different cases,  
9 frankly.

10 MR. FISHMAN: I understand.

11 THE COURT: Okay?

12 MR. FISHMAN: Okay.

13 THE COURT: All right. Just thinking about that now.

14 All right. Look, here I've tried to stay as  
15 open-minded as possible on -- on all these things. And -- and  
16 the -- the problem with guideline sentencing, in my view, is  
17 that, you know, the Court has to -- and it's not comfortable  
18 for the Court to do, but the Court has to make some difficult  
19 decisions about these types of things.

20 In fairness, as a legal matter, what I would say, and  
21 this will be my ruling, is that I -- I believe the probation  
22 officer's report and the analysis of 2B1.1(b)(1)(H), in light  
23 of Mr. Harrison's objections and in light of Mr. Buckley's  
24 argument, should be applied. And the reason I think it should  
25 be applied is that as a legal matter, I am able to find under

1 the guidelines scenario as a matter of sentencing that the  
2 \$960,000 and two kilograms were extorted and diverted, and I  
3 can say that for the reasons that were argued in the papers as  
4 well as by Mr. Buckley in open court. But I can -- I -- I can  
5 also find, and I remember this very vividly, the tape that Mr.  
6 Jackson made of Mr. Hansberry that corroborated what had  
7 happened and what was going to happen in the future.

8 So Objection Number 3, sub-paragraph 2, is overruled.

9 With regard to 2C1.1(b)(1), I can hardly differ from  
10 the facts that Mr. Buckley lodged with the Court. But looking  
11 at them in light of the arguments made by Mr. Harrison, I can't  
12 say that the jury found all of those acts to have been  
13 committed. There is some corroboration, although not the  
14 strength of the sort that supported my ruling on Objection  
15 Number 3, sub-paragraph 2. And I would certainly say that  
16 the -- that the act of the diversion of the \$960,000 cash found  
17 by the probation officer is -- is supportable, but I feel, as  
18 a -- a -- a jurist attempting to apply the guidelines,  
19 uncomfortable with saying that there are multiple acts beyond  
20 that in light of the verdict of the jury which acquitted the  
21 defendant of many multiple counts and acts of extortion.

22 So therefore, Objection Number 3, sub-paragraph 1  
23 is -- is sustained. And as of right now, going forward with  
24 the probation officer's report, will be reduced by the two  
25 levels that were found under that enhancement, all right?

1 MR. BUCKLEY: Judge, Judge, may I just be heard on --  
2 on one last --

3 THE COURT: Of course.

4 MR. BUCKLEY: I understand you've ruled, Judge.

5 THE COURT: Of course.

6 MR. BUCKLEY: But just so the record is clear, the  
7 Calhoun Monte Vista rip and his conversation with Hansberry  
8 about the ten-kilo rip and the Pulley rip were not affected by  
9 the acquittals, they were not acquitted conduct, just so the  
10 record's clear.

11 THE COURT: Well, why do you say that? I -- I'm --  
12 I'm -- I respect your position, but what -- what -- what --  
13 what -- why do you say that?

14 MR. BUCKLEY: Because those acts had nothing to do  
15 with the counts that were acquitted. You had the Renee  
16 Williams rip that was acquitted; you had the Chris Wilson rip  
17 that was acquitted; you had the Nick Simmons rip acquitted;  
18 Chester Dwayne Browning rip acquitted.

19 THE COURT: Okay.

20 MR. BUCKLEY: And gosh, there was the Vasquez rip  
21 that was acquitted. There was one more, the name escapes me.  
22 But -- but these acts which I've explained to the Court --

23 THE COURT: Yes.

24 MR. BUCKLEY: -- were totally independent of the  
25 acquitted counts.

1 THE COURT: I guess my --

2 MR. BUCKLEY: Totally.

3 THE COURT: I guess my discomfort is -- and I looked  
4 at the charging document actually -- is that I don't think  
5 those were specifically set forth in the indictment in Count 1.  
6 So that's why I -- you might have seen me going through this  
7 during Mr. Harrison's argument, but --

8 MR. BUCKLEY: Judge, you're right, they weren't  
9 expressly set forth in the indictment, but with all due  
10 respect, I don't think there's a legal requirement that that --  
11 they be.

12 THE COURT: Okay.

13 MR. BUCKLEY: Uh --

14 THE COURT: Okay. All right. Maybe there will be a  
15 government and a defense appeal, but I'm going to go with --  
16 I'm going to go with overruling 3, sub-paragraph 2, and  
17 sustaining 3, sub-paragraph 1. And Mr. Hampstead's calculation  
18 is currently reduced by two, okay?

19 MR. BUCKLEY: Thank you for letting me be heard,  
20 Judge.

21 THE COURT: Yeah, no problem. Thank you both.

22 Let's go to paragraph 35. I don't -- with all due  
23 respect, Mr. -- Mr. Harrison, this is a difficult one for you.  
24 I have looked at *Partida*, I have looked at *Powers*, but I have  
25 also looked at -- I've also looked at 2C1.1(b)(3), and it seems

1 that even a -- an officer, but especially one here who is a  
2 lieutenant and somewhat active in the community, would qualify  
3 for a public official enhancement under that particular  
4 section. Go right ahead.

5 MR. HARRISON: Thank you, Judge.

6 Judge, the argument is simply Mr. Hansberry's --  
7 Lieutenant Hansberry's position was a necessary element in the  
8 extortion conviction. He had to be who -- he had to have his  
9 position to have been convicted of what he was convicted, and  
10 that therefore, the argument is that one of double-dipping.  
11 It's improper to have to be a certain type of official and then  
12 to get an enhancement --

13 THE COURT: Okay.

14 MR. HARRISON: -- for being that official.

15 THE COURT: Okay. In other words, if he weren't a  
16 public official, he couldn't have extorted. The fact that he  
17 was a public official supported the conviction substantively.  
18 If you go ahead and enhance the sentence based on his status,  
19 that's -- as you correctly stated it, would be double-dipping  
20 that was addressed by the two cases that I mentioned.

21 Mr. Buckley, response?

22 MR. BUCKLEY: Judge, simply that it's our position  
23 that Application Note 4 of the pertinent guideline section  
24 expressly states that a law enforcement officer is one deemed  
25 to hold a sensitive position, and I think it recognizes the

1 Sentencing Commission's recognition of the fact that it's an  
2 especially serious offense when a police officer commits the  
3 crime that Mr. Hansberry committed.

4 THE COURT: Okay. I am going to overrule paragraph  
5 3 -- excuse me, objection 3, sub-paragraph 3 on the authority  
6 of *U.S. versus Partida*. I believe that's the Sixth Circuit's  
7 latest discussion about double-dipping in the guidelines. We  
8 see this from time to time. I recognize the argument, but the  
9 Court's rationale, which I'm bound to follow, is that  
10 sentencing is a different idea than -- than charging, and  
11 whereas Mr. Harrison is conceptually and argumentatively  
12 correct, as a matter of law, the Sixth Circuit has disagreed  
13 with him, and I don't think that I'm able to go beyond that --  
14 go beyond that authority to find something different. So that  
15 takes care of Objection Number 3.

16 Objection Number 4, if I can find it -- do I have  
17 Objection Number 4?

18 MR. HARRISON: 3B1.1(a), organizer, leader  
19 enhancement, four points, Your Honor, role in the offense.

20 THE COURT: My -- my report -- oh, there it is. I'm  
21 sorry. Okay. Oh, I see. That's -- okay. All right. I  
22 apologize. Objection Number 3, sub-paragraph number 4. My  
23 apology to you. My -- it's obscured on my copy here. All  
24 right. There's a four-level enhancement in paragraph 7 -- 37  
25 for being an organizer or leader of criminal activity that

1 involved five or more participants.

2 Go right ahead, Mr. Harrison.

3 MR. HARRISON: Thank you, Your Honor. Your Honor,  
4 the thrust of the argument here is that if there were leaders,  
5 the evidence shows the leaders were Art Leavells and Gary  
6 Jackson. And I've cited some case -- case law for the Court,  
7 *Vandeberg*, that says, you know, even being an -- having an  
8 essential role or some sort of control in the conspiracy isn't  
9 sufficient to -- to assess four points for control or authority  
10 over the conspiracy itself.

11 Judge, we heard -- we heard testimony, Jackson, 123,  
12 lines -- page 123, lines 16 to 25, explaining that even after  
13 Hansberry -- Lieutenant Hansberry was no longer working with  
14 Jackson or Leavells, that Leavells continued his relationship  
15 with Jackson; that whenever Jackson had a problem, he would  
16 direct it to Leavells for assistance; he helped out a couple of  
17 relatives of -- of Mr. Jackson's. He was -- Jackson testified  
18 that his contact was, I believe he -- he said, 60/40, meaning  
19 60 percent with Leavells, 40 percent with Hansberry and/or  
20 Bryan Watson.

21 And that, Judge, you know, the case law makes it I  
22 think clear that just because of Sergeant -- Lieutenant  
23 Hansberry's rank, then-sergeant, that's not sufficient to get  
24 points for organizing or leadership in the conspiracy itself,  
25 and for that reason, Your Honor, we're objecting to the

1 four-point enhancement.

2 THE COURT: Okay. Let me take a look at something  
3 briefly. As I do that, Mr. Buckley, if you want to get  
4 started, the question is if -- if Lieutenant Hansberry was the  
5 leader, who would be the five or more participants in criminal  
6 activity under 3B1.1(a) that would support the four-level  
7 enhancement set forth in paragraph 37? Go -- go right ahead.

8 MR. BUCKLEY: Thank you, Your Honor.

9 We feel rather strongly that this enhancement is  
10 appropriate, and it has nothing really to do with the fact of  
11 rank alone. The Court may recall the testimony in this case.  
12 There was extensive testimony that as sergeant and raid  
13 commander, Mr. Hansberry was the man on the street. He decided  
14 what was seized, he decided who would be arrested and who would  
15 be released.

16 There was testimony from Arthur Leavells that  
17 everyone in the crew except for Officers Bray and Beasley were  
18 involved in this activity. So if the Court takes into  
19 consideration Hansberry himself, Mr. Watson, Mr. Leavells,  
20 Police Officer Larry Barnett and -- and Officer Leavells  
21 testified about one specific instance when Officer Barnett  
22 stole a quantity of cocaine. Also other individuals were one  
23 Officer James Napier, who is deceased, Officer Tourville and  
24 Officer Geelhood. There were also other individuals, Your  
25 Honor: Lamont Calhoun, Gary Jackson and Calvin Pulley.

1           And if the Court will just think back to what I call  
2     the power moves recording, the meeting recorded by Gary  
3     Jackson, when as soon, as soon as Hansberry, the leader,  
4     excuses Officer Herbert from the room and another woman and  
5     tells them to leave, he's alone with his -- his co-conspirators  
6     and with Mr. Jackson, the first thing he says is, "I had to do  
7     it this way to make sure you weren't with the feds, the DEA or  
8     the FBI setting me up." He said, "I'm telling you this. I'm  
9     telling you we can do it brown-bag style. I'm telling you that  
10    we can give you money off the top." He says in the meeting,  
11    "I'm telling you that if you or your people get arrested for  
12    selling drugs, I'm gonna come and get you." I, I, I, I, I.

13           Judge, there's no question that Mr. Hansberry was the  
14    organizer or leader of criminal activity involving more than  
15    five participants, and so we think that the enhancement is  
16    appropriate.

17           THE COURT: Okay. All right. Very good. Thank you  
18    both.

19           I'm going to make a ruling here, and I've looked at  
20    this very carefully. Again, Mr. Buckley has persuasively  
21    argued the position of the United States, and yes, there was  
22    testimony to support much, if not everything, that he had to  
23    say.

24           As a matter of law, I guess what I have to look at is  
25    my recollection of the evidence in light of the jury verdict

1 and make an application under 3B1.1 that's proper.

2 What I did, in looking at the totality of the case,  
3 and I relied extensively on the quotes from the tapes that Mr.  
4 Buckley just put forth before the Court, was to determine that  
5 Hansberry was at the top of the -- at the top of the chain. It  
6 would certainly appear, based on all the testimony involving  
7 that particular episode with Jackson out -- outside of the  
8 search warrant area where he was interviewed and taped, the  
9 conversation would involve Watson, Leavells by his own  
10 testimony was involved in that, and certainly Jackson.

11 The other -- other individuals I'm -- I'm -- I don't  
12 have the same level of -- of confidence in. Mr. Buckley's  
13 position may very well and possibly and maybe even probably is  
14 correct, but as a matter of law, I think I have to be careful.

15 And so accordingly, my judgment with regard to 3B1.1  
16 is that Hansberry was the supervisor and leader of criminal  
17 activity and he qualifies for leadership enhancement  
18 adjustment, but -- but I can only find those four people to be  
19 reliably beyond preponderance of the evidence those that I  
20 could consider.

21 So what I'm going to do is I'm going to adjust the  
22 probation officer 's report to find a two-level enhancement  
23 which says that "if the defendant was an organizer, leader,  
24 manager or supervisor in any criminal activity," which I think  
25 he was, "other than described in (a) or (b)," which details the

1 five people, which I haven't been able to find, then he should  
2 get a two-level enhancement. So I would say I sustain the  
3 objection in part and I will find that 3B1.1(a) does not apply  
4 but 3B1.1(c) does apply.

5 And Mr. Hampstead's report now is a net minus four in  
6 the overall Offense Level based on the rulings I made with  
7 regard to Mr. Harrison's objections set forth in paragraph --  
8 paragraph 3, 1 through 4.

9 All right. Now, that gets us to Objection -- unless  
10 I'm missing something, that gets us to Objection Number 5 where  
11 Mr. Harrison on behalf of his client requests Level -- if all  
12 of his objections had been sustained, he'd be at Level 14,  
13 Criminal History Category I, and a range of 15 to 21 months. I  
14 would overrule that objection because based on the computations  
15 the Court made, I have a different view of the guideline range.

16 Is there anything further you'd like to be heard on  
17 with regard to that objection, Mr. Harrison?

18 MR. HARRISON: Not with regard to that objection, no,  
19 Your Honor.

20 THE COURT: Mr. Buckley?

21 MR. BUCKLEY: No. Thank you, Your Honor.

22 THE COURT: Okay. Then the Court has entertained  
23 argument on and resolved all objections to the Pre-Sentence  
24 Report. The factual findings or, excuse me, the legal findings  
25 of the Court is that the overall Offense Level is 38, the

1 Criminal History Category is I, the sentencing range is 151 to  
2 188 months.

3 The factual findings of Mr. Hampstead will be  
4 considered by the Court but will be considered in light of the  
5 factual objections raised by Mr. Harrison, and the Court will  
6 rely on the overall record of the trial which it had the  
7 benefit and privilege of hearing over the course of six, seven  
8 weeks this past summer.

9 And that will be the -- that will be the Court's  
10 rulings on all the objections. Any --

11 MR. HARRISON: Your Honor?

12 THE COURT: Yes.

13 MR. HARRISON: I -- I'm sorry. I believe -- or did  
14 the Court -- Court misspeak? I believe the level, Offense  
15 Level would be 34, for a guideline range of 151 to 188.

16 THE COURT: Right.

17 MR. HARRISON: I thought I heard the Court --

18 THE COURT: If I -- if I didn't say that, I was  
19 wrong. I netted out four -- I -- I sustained two objections.  
20 I netted out four points as a result, and I came down at 34,  
21 Criminal History Category I, 151 to 188. Everybody clear on  
22 that?

23 MR. HARRISON: Yes. Thank you.

24 MR. BUCKLEY: All right. Thank you, Your Honor.

25 THE COURT: All right. Thank you both very much for

1 those compelling and well-argued positions on your objections.

2 Now, let me see what else we need to do here.

3 There's no -- let me see if I have this correct, because I read  
4 your Sentence Memorandum and I think you wrote your Sentence  
5 Memorandum on the basis of what we just resolved. But you're  
6 not -- you're not asking for a -- a departure, but you're going  
7 to ask for a -- a variance when you allocute, is that correct,  
8 Mr. Harrison?

9 MR. HARRISON: That's correct, Your Honor.

10 THE COURT: Okay. So then I find there's no  
11 departure authorized, none's been made by the United States,  
12 and none would lie under the law.

13 I would like to talk very briefly about a fine.  
14 There's a potential fine of \$250,000 maximum on this particular  
15 count. Guidelines suggest a -- a 25 to \$250,000 fine, but my  
16 overall sense is that there's no upside or even necessarily  
17 ability to pay any sort of fine, so I'm not going to impose  
18 one.

19 Which then leads to forfeiture and restitution, and  
20 I -- I don't know what the government's position is at present  
21 on those matters. If you'd like to be heard now, Mr. Buckley.

22 MR. BUCKLEY: We would leave it to the Court's  
23 discretion, Judge. I -- I would respectfully request the Court  
24 to consider at least a nominal fine. When one considers the --  
25 the amount of money, and our position is it was well over a

1 million dollars in drug proceeds that Mr. Hansberry stole and  
2 used for his own personal enrichment, and there was testimony  
3 that he essentially lived large based upon his extortion.

4 THE COURT: Right.

5 MR. BUCKLEY: There was testimony that he spent  
6 thousands of dollars a week at the Ace of Spades Club where he  
7 was considered a VIP. He -- he purchased an Aston Martin, an  
8 Escalade, a Corvette. And I don't believe that all of the  
9 money that was stolen has been accounted for. There was  
10 testimony from Special Agent Kevin Nalu of the IRS. I would  
11 ask the Court to at least consider imposing at least a nominal  
12 fine in this case.

13 THE COURT: Okay. All right. I appreciate that and  
14 I will order restitution and/or a fine as well as -- there's no  
15 forfeiture, right, that's all been taken care of?

16 MR. BUCKLEY: That's correct, Your Honor.

17 THE COURT: Okay. All right. Then I'll take care of  
18 those financial matters in my discretion.

19 MR. HARRISON: May I be heard?

20 THE COURT: Yes, of course. You want to speak to the  
21 fine issue?

22 MR. HARRISON: If I -- if I could.

23 THE COURT: Go right ahead.

24 MR. HARRISON: Thank you, Judge.

25 THE COURT: I -- I -- I -- I read -- you know, I

1 respect Mr. Buckley and his position, as you well know. My  
2 problem there is that the probation officer found as a matter  
3 of law or suggested to me there's no ability to pay. If I  
4 ordered a fine in light of that finding, I'd -- I'd be in a  
5 little bit of trouble, so I'm not inclined to impose one, okay?

6 MR. HARRISON: Fair enough. Thank you, Your Honor.

7 THE COURT: All right. Okay. All right. Okay.  
8 Very good. Let's have Mr. Hansberry come up to the microphone  
9 and we'll get going on the various arguments that counsel wish  
10 to make at this time. Okay. Mr. Hansberry's here in court.  
11 He's now joined his lawyer at the microphone.

12 Mr. Hansberry has a right to make any statement or  
13 present any information to mitigate the sentence. I would  
14 recognize, first of all, Mr. Harrison on behalf of his client  
15 for any remarks he'd like to make on behalf of the defendant.  
16 Again, I sat through the trial. I read through the entire body  
17 of the sentencing portion of the case. I've read all the  
18 memos. I've read all the letters. And -- and I'm not  
19 precluding or saying don't repeat, but you should bear in mind  
20 that I do have a good idea of many things. And you go ahead  
21 and say anything else you'd like to say, Mr. Harrison.

22 MR. HARRISON: Thank you, Your Honor.

23 And I -- I'll do my best not to restate. You know,  
24 obviously, Your Honor, I brought up a number of issues to the  
25 Court for the Court to consider with regard to a variance in

1 sentence, including concern over unwarranted disparities in  
2 sentence given the sentences -- the plea offers, the sentence  
3 agreements. And then, in addition to that, 5K1 motions on  
4 behalf of the co-defendants in this case are astronomically  
5 different from the range that we're talking about here, and  
6 that pursuant to 18 USC 3553(a) (6), the Court should consider  
7 unwanted -- unwarranted disparities.

8 And these -- all -- all Mr. Hansberry did was  
9 exercise his constitutional right to a trial in this matter.  
10 He didn't get on the stand, he didn't perjure himself; he asked  
11 for trial. And I understand that there would be a benefit of  
12 cooperating, but I -- I would think that that's typically  
13 contemplated in a 5K1 motion, and if you look at the pleas that  
14 were given the other defendants, there is a significant  
15 disparity.

16 Secondly, Your Honor, I'm concerned over  
17 vulnerability of my client to abuse in the corrections system.  
18 The Court heard testimony my client's been a police -- before  
19 he was a police officer at 17 years of age, he was a -- he was  
20 a Police Explorer. It's -- his entire adult and preadult  
21 identity has been law enforcement. He has put lots and lots  
22 and lots of dangerous individuals into the prison system, both  
23 state and federal. We heard testimony, we had an actual cartel  
24 member I believe testify as a witness here. These were very  
25 dangerous people that they were targeting and pursuing, and I

1 have great concern for him in the -- in the corrections system.  
2 I'd ask you to take that into consideration.

3 Collateral consequences is another issue that we  
4 brought up. David has known nothing in his entire life but law  
5 enforcement. He's forever precluded from any -- any even  
6 remotely related career as a result of this conviction, Your  
7 Honor.

8 And he's got a young daughter. He -- who -- who --  
9 who -- who is -- who is going to be injured. And -- and in  
10 terms of collateral consequences and vulnerability to abuse, I  
11 would ask the Court to consider the potential risk that his  
12 daughter and fiancée may be under as a result of the facts and  
13 evidence that came out in this case as a collateral,  
14 additional, horrific punishment that he has to suffer as a  
15 result of all of this.

16 Judge, the other thing I ask you to consider, and  
17 while it may seem on one level ironic given the fact that Mr.  
18 Hansberry is convicted in relation to his employment, but this  
19 is a man who was a police officer for many, many years, and for  
20 a great, I believe even majority of them, unrelated to the  
21 narcotics field at all. I know that he ran a shooting team  
22 that was overseen by the Attorney General's Office under the  
23 Joshua Project; subsequently a Detroit task force, Swift, that  
24 was all non-fatal shootings and violent crimes, carjackings,  
25 armed robbery.

1           We've attached commendations that he received for his  
2 work. You heard from people in varieties -- a variety of  
3 different seg -- segments of public service that have written  
4 letters on behalf of Mr. Hansberry, not in their official  
5 capacity but in their personal capacities, how they knew him.  
6 They knew him through work, how they knew him, the work ethic  
7 that he had, his thoroughness, his dedication.

8           Even in light of this conviction, Judge, I would  
9 respectfully suggest that this Court should give him some  
10 credit for all those years of good work that he's done that's  
11 been supported by members of that community.

12           Judge, that goes to the other issue which is the good  
13 deeds and past integrity. I think it's supported by the  
14 attachments that we've provided.

15           And finally, as I mentioned, he is a chronic  
16 asthmatic. The Court probably noticed throughout the trial he  
17 had to be medicated, and that's a health concern which the  
18 cases say is another issue that the Court can consider.

19           I'd ask that you consider all of these factors,  
20 Judge, and that you depart from the guideline range and fashion  
21 a sentence that's fair and equitable, that's a deterrent, but  
22 also takes into account the particular vulnerabilities of  
23 Lieutenant Hansberry and the particular collateral issues that  
24 he faces.

25           THE COURT: Very good. Thank you very much for those

1 words, Mr. Harrison. Greatly appreciated as always.

2 And now, Mr. Hansberry, I would recognize you  
3 personally to state any remarks on your own behalf that you'd  
4 like to make to the Court in support of the sentence it should  
5 impose. Go right ahead.

6 DEFENDANT HANSBERRY: Thank you, Your Honor.

7 Your Honor, I understand that, based on the federal  
8 rules and procedure, I am allowed to address the Court in  
9 effect to mitigate my sentence. With your permission I would  
10 like to proceed.

11 THE COURT: Of course.

12 DEFENDANT HANSBERRY: Thank you.

13 Early life. I was born in northwest Detroit right  
14 outside of Rosedale Park. I have two parents, they're still  
15 living and that are approaching their 70s. They've been  
16 married for 45 years I want to say. I have a brother and a  
17 sister. I have two nieces and two nephews. The family of my  
18 own, Your Honor, I have is a fiancée named Sierra and a  
19 daughter named Madison. I am also partially raising the two  
20 sons, Cameron and Austin, of my deceased best friend.

21 I was educated at Redford High School. Shortly after  
22 graduating from Redford High School, I attended Henry Ford  
23 Community College where I received a scholarship to attend  
24 University of Michigan in Dearborn.

25 When I was 14 years of age, I had the opportunity to

1 go to San Diego, California. I had a cousin who's older than  
2 me so I call him my uncle. He was pretty high ranking in the  
3 navy. During that experience I had an opportunity to meet and  
4 befriend a Navy Seal. That is what I wanted to do with my  
5 life. I admired the service, the dedication and the commitment  
6 and the willing to give it all, not for money, not for fame,  
7 but for the opportunity to do things that other people could  
8 not do. Everyone can't protect themselves, and there are  
9 people in this country that have to protect those that cannot  
10 protect themself.

11 I learned everything that I needed to learn about  
12 becoming a Navy Seal by the time I was 15 years old, and I  
13 realized that I did not have the opportunity or I would not be  
14 physically capable to complete the strenuous task of becoming a  
15 Navy Seal due to my chronic asthma.

16 So the next best -- the next best thing, Your Honor,  
17 that I wanted to do was join the police department. That was  
18 my alternative to serve this country. Without delay, I joined  
19 the Law Enforcement Explorers Program through the Detroit  
20 Police Department at the age of 15. Through that program,  
21 it's -- it's situated similarly to the police department with a  
22 rank structure. I reached the rank of lieutenant by the time I  
23 was 17 years old in the Detroit Police Explorers Program.

24 Shortly after, I graduated out of that program and  
25 was hired by the Detroit Police Department as a student police

1 officer. I graduated at the age of 18 years old. I was a  
2 sworn, armed, certified police officer for the City of Detroit  
3 at the age of 18.

4 Your Honor, because of my youthful appearance, I  
5 started to go undercover as a crack dealer at the age of 18 and  
6 19. That is where I learned all the nuances of posing as  
7 someone who sells illegal narcotics. Primarily my function was  
8 to target buyers and suburbanites who came down here who would  
9 feel comfortable and willing to deal with me because I looked  
10 so youthful that the thought that I may be -- may be a police  
11 officer never crossed their mind, and I had great success at  
12 that. From 18 to 19 I did that.

13 By the age of 21 I was working with the Special  
14 Operations Unit, and that unit is to investigate and apprehend  
15 high profile cases with dangerous offenders such as criminal  
16 sexual conduct offenses, any high profile shootings. If a  
17 shooting happened at a skating rink or multiple victims or  
18 kids, we would go after that. We worked often with the Violent  
19 Crimes Task Force and we would work to apprehend those  
20 dangerous offenders.

21 I had some success in that unit, Your Honor, and at  
22 the age of 22 to 23 I was recruited to join the Narcotics  
23 Enforcement Unit, again, partially and based on my  
24 youthfulness, that my superiors felt that I had an edge on  
25 other officers because I was youthful, I would fit in, I would

1     blend, I would learn how to talk the talk, how to walk the  
2     walk, and basically be -- how to hide in plain sight from drug  
3     dealers or the -- from drug dealers or the detection of police  
4     personnel.

5             And joining at 22 to 23, Your Honor, I was formally  
6     trained. Previously when I went undercover as a crack dealer,  
7     that was very kind of trial by fire. You know, I taught myself  
8     what I needed to know based on dealing with people on the  
9     streets. Well, at this point in my career, Your Honor, I was  
10    formally trained, and in some of those trainings I received was  
11    undercover tactics, how to recruit, how to handle, how to  
12    manipulate, how to use informants and cooperating defendants,  
13    how to apply for search warrants, the probable cause standard,  
14    the methods that I needed to go through to get them authorized.  
15    I was also trained in tactical and dynamic entry which, in  
16    short, is raiding and clearing a house.

17            While assigned to this unit, Your Honor, I had the  
18    opportunity to go undercover literally several hundreds of  
19    times. I -- I conducted surveillance over a thousand times.  
20    I've -- I've participated in over a thousand controlled buys,  
21    which is me being a controlling officer and having an informant  
22    purchase the drugs and being in close proximity to this  
23    happening. And I also had the opportunity, Your Honor, to do  
24    hundreds of undercover purchases myself where I would go in,  
25    directly engage with the drug dealer and purchase the narcotics

1 myself. Your Honor, this gave me the ability to emulate,  
2 behave and learn the minds of people in the narcotics trade.

3 In 2006, Your Honor, I was promoted to detective  
4 sergeant, the youngest to note. I was placed in charge of a  
5 task force named the Joshua Project. This task force consisted  
6 of Detroit Police Department, the prosecutors from the Attorney  
7 General's Office, Special Agents from the Attorney General's  
8 Office and the Michigan Department of Corrections. Here I  
9 learned how to do crime group identification. I learned a lot  
10 about interviewing and interrogation, warrant requests with the  
11 Prosecutor's Office, case presentation to a prosecutor to get a  
12 warrant authorized, and also case presentation in the courtroom  
13 where I would assist the officer in charge in presenting the  
14 case and the facts for the jury in the best way we could to  
15 ensure conviction, Your Honor.

16 I've conducted over a thousand interrogations, Your  
17 Honor, and I maintain personally that I have about a 90 percent  
18 conviction rate.

19 While attending a department-sponsored interrogation  
20 school through the Eastern Michigan University, I learned  
21 something about myself, which was one of my best qualities of  
22 interrogating, and that is I'm an emotional person. It was a  
23 study during that time, Your Honor, this was around 2008, when  
24 we were taking a look at re-approaching interrogations, and the  
25 study determined, Your Honor, through Eastern Michigan that

1 people with high EQ, similar to intelligence quota, is  
2 emotional quota, and that people with emotional quota make  
3 better investigators because they actually care about people,  
4 and they make better interrogations because they reach people  
5 in a place not from fear or not from power or not from  
6 leverage, but they reach people in their hearts and in their  
7 minds, and you have a higher success rate and a higher chance  
8 of getting a conviction if you can reach someone's heart and  
9 someone's mind.

10 During my tenure as a detective sergeant and working  
11 with the Swift Unit and the Joshua Project, I closed four of  
12 the biggest armed robbery sprees in the department's history.  
13 These sprees ranged from attempted murder, carjacking, armed  
14 robbery and unarmed robberies. And these were crime groups,  
15 Your Honor, and a lot of times these same groups would be  
16 perpetrating all of these acts. Those are the crimes that I  
17 would focus on mainly.

18 When Chief Warren Evans became the chief of police,  
19 he created a new mandate for Narcotics Division, to out the top  
20 tier narcotic traffickers. I was -- I was recruited to return  
21 as a raid and tactical commander of Code 2913, Western  
22 Enforcement District, which would later be promoted to  
23 Conspiracy West.

24 While assigned to the Narcotics Conspiracy Division,  
25 Conspiracy West had the highest stats and highest

1 accomplishments in the history of Narcotics. We had to change  
2 the tactics, Your Honor. We realized that buying crack from a  
3 crack house and raiding it was not effective. The crack house  
4 would go right back up the next day or sometimes the -- that  
5 exact same day. So we had to change our tactics, Your Honor.  
6 We had to master source manipulation, flipping defendants into  
7 cooperators, using subterfuge for informants, using deception  
8 and using police psychology.

9 Which brings me to two important points, Your Honor.  
10 Not to belabor the Gary Jackson recordings, Your Honor, but I  
11 want to express to the Court, and I would be remiss if I  
12 didn't, Your Honor, I was a Detroit Police sergeant. By law, I  
13 had the legal authority to talk to drug dealers. By law, I had  
14 the legal ability to lie to drug dealers if it was in the best  
15 interest of the city to remove more drugs off of the street.

16 It would be disingenuous for me to tell this Court  
17 that every drug dealer that I come in contact with, it is  
18 appropriate to lie, deceive or make false promises to them.  
19 But there are certain circumstances, Your Honor, where that is  
20 a appropriate and a necessary action or a necessary evil, and  
21 that is when you have an opportunity to take two million  
22 dollars worth of drug money off of the street, that is an  
23 appropriate time. When you can seize a hundred kilos of  
24 cocaine and stop them from hitting the cit -- hitting the  
25 streets of the citizens of Detroit, Your Honor, that is an

1 appropriate time.

2 I am telling this Court, Your Honor, the conversation  
3 you hear between me and Gary Jackson, I am in total control.  
4 The conversation was documented, Your Honor, through activity  
5 logs, through paperwork that Gary Jackson signed, Your Honor,  
6 and also through a police report, none of these things which  
7 were admitted by the government but was omitted. All of these  
8 documents exist. So I exercised my legal right as a police  
9 officer to use some deception. I went back and made my  
10 superiors aware of it and I documented that activity, the  
11 location it happened and what occurred, on official department  
12 paperwork, Your Honor.

13 And I'll move on from Gary Jackson. Thank you for  
14 giving me the opportunity.

15 Secondly, Your Honor, and I'll be real brief, is the  
16 conversation with Arthur Leavells. Again, Your Honor, I was a  
17 sworn police officer for the City of Detroit. I had the  
18 authority to investigate crime. As a police lieutenant, Your  
19 Honor, I had the departmental rank to investigate other police  
20 officers. When this allegation was brought to me by Bryan  
21 Watson, I believed I owed both of them. I believed I owed Mr.  
22 Watson an opportunity to create some space between Leavells and  
23 going directly to Internal Affairs or the FBI so it would not  
24 be telegraphed that he was the one making the complaint, and I  
25 believe I owed it to Arthur Leavells, as a former colleague, a

1 former friend, to interview him and to see exactly what was  
2 going on before I took this complaint to Internal Affairs,  
3 which would cause, as I am going through now, massive  
4 destruction of a person's life, and I believe -- I believe I  
5 owed it to them to make sure I knew what I had before I went.

6 I would like to commend Officer Watson, Your Honor,  
7 because it's a very difficult thing to turn in a friend, a  
8 colleague that you've worked with for ten years. To be honest,  
9 Your Honor, I would have a hard time doing that. That is a  
10 hard thing to do.

11 Your Honor, after having a meeting with Arthur  
12 Leavells, I know that the call -- I know that the tape sounds  
13 convincing. There's over 30 years of undercover experience in  
14 a hour and a half worth -- worth of tapes that this Court and  
15 that this jury heard, it's over 30 years. The tapes are going  
16 to sound convincing, Your Honor. The recordings are going to  
17 sound convincing.

18 But I believe what is more important, Your Honor, is  
19 the action that occurred after the recordings, and that action  
20 is, and this Court heard testimony, that I called Internal  
21 Affairs, I made an appointment, I showed up for that  
22 appointment, and I emotionally -- it was emotional, it was an  
23 emotional moment for me -- I emotionally shared the contents  
24 and the activities of Arthur Leavells with Investigator Timothy  
25 Ewald of the Public Corruption Unit, Your Honor.

1           And I will move on from that. Thank you for allowing  
2 me to touch base, to revisit that.

3           THE COURT: Of course, mm-hmm.

4           DEFENDANT HANSBERRY: Quite frankly, Your Honor,  
5 candidly speaking, to get a hundred kilos off of the street,  
6 Your Honor, and to seize a million dollars worth of drug money,  
7 I would have told Gary Jackson whatever I needed to tell him to  
8 get that information, and I would have not under any  
9 circumstances followed up with any promises, Your Honor. And I  
10 believe the Court record shows that Gary Jackson was not given  
11 a penny of the money from that truck and he was paid legally  
12 through the Detroit Police Department \$250,000, which is  
13 paperwork that I generated and sent up through channels to the  
14 chief of police, and when the chief of police sent it back down  
15 and approved it, that is when he was paid, Your Honor. And any  
16 circumstances equivalent or similar to that, Your Honor, is  
17 exactly how he would have been paid until Gary Jackson decided  
18 in his mind he did not want to deal with me anymore.

19           Your Honor, the record is clear that Gary Jackson  
20 accuses me of selling drugs, of stealing money and of helping  
21 him steal money, Your Honor. And then the record becomes even  
22 clearer, Your Honor, in the point where he testifies that, "I  
23 never saw Hansberry again after that day. I don't know him. I  
24 don't have any problems with him." That's the truth when  
25 questioned by Michael Harrison if me and him had a rocky

1 relationship.

2 Your Honor, I always took my investigations as they  
3 came. When one of Gary Jackson's nephews I came across, I did  
4 Gary Jackson's nephew no favor. I arrested him and I put him  
5 in prison. When I caught Gary Jackson's top lieutenant, Your  
6 Honor, with heroin and a gun and money, Your Honor, I made him  
7 work. He had to produce a kilo of cocaine, Your Honor, to get  
8 out of his case. I did no favors for Gary Jackson knowing what  
9 I have.

10 And I'll move on. Thank you for allowing me to  
11 revisit Gary Jackson again.

12 THE COURT: Mm-hmm, of course.

13 DEFENDANT HANSBERRY: I'm finishing up here, Your  
14 Honor, and I would like to share with you some things. What  
15 hurts me the most -- well, I'm heartbroken, Your Honor, as I  
16 stand here today, and I'm -- I'm heartbroken, and what hurts me  
17 the most is my proudest accomplishments that should have been  
18 famous, Your Honor, has made to be infamous. The seizure of  
19 \$2.1 million, Your Honor, was one of my proudest  
20 accomplishments. Before I even -- the first person I called  
21 from that scene that day was my mom and dad, and you know what  
22 I told them? "Your son is going to be on the news tonight. I  
23 just got the biggest cash seizure ever in the history of the  
24 Detroit Police Department." I let them -- I told them, "Call  
25 all the family, set the recorders to tape, because this is the

1 proudest moment of my life." And that moment, Your Honor, has  
2 been turned against me and incriminated me and now has me  
3 looking at a substantial prison sentence.

4 Your Honor, the FBI, the DEA, Border Patrol and the  
5 command staff was at that location for one and one reason  
6 alone, Your Honor: Because I was the commander at that scene  
7 and I notified them. If I wanted to keep that scene isolated  
8 and in a vacuum, Your Honor, I didn't have to make one phone  
9 call. But I was trying to be transparent and I was trying to  
10 minimize any opportunities for theft by inviting the federal  
11 government to that scene.

12 In addition to inviting the federal government to  
13 that scene, Your Honor, I attempted to turn the case over to  
14 the DEA. They told me in response -- and I can still -- I  
15 still remember the task force officer's name, Sergeant Darren  
16 Johnson -- that they had another big investigation going and  
17 they would not have the time or the manpower to put into this  
18 seizure involving Gary Jackson. But right at that scene, Your  
19 Honor, I was willing to turn over Gary Jackson as the  
20 informant; I was willing to turn over the driver who we seized  
21 the money from; and I was also willing to turn over the money  
22 to the federal government. And these are facts, Your Honor,  
23 that could be checked.

24 The second proudest accomplishment, Your Honor, is  
25 something that is being used against me not in the proper

1 context, and that is the conversation that I'm having with  
2 Arthur Leavells about Renee Williams, about the Robson location  
3 and about Nicholas Simmons.

4 Your Honor, if you recalled it correctly, I told  
5 Arthur Leavells that all of the dope and all of the money we  
6 put on the table at Narcotics and we only had four complaints.  
7 That is -- excuse my language -- that expletive, starting with  
8 the "S" word, is not easy to do so. Your Honor, through my  
9 whole tenure at Narcotics, I turned in almost \$50 million in  
10 drugs and almost \$5 million in cash, and, Your Honor, I did  
11 that with the lowest complaint record ever, four notable  
12 complaints.

13 Renee Williams, Your Honor, I was aware of because I  
14 was investigated by Internal Affairs and cleared.

15 The Robson location, Your Honor, I worked tirelessly  
16 with the DEA. Christopher Rosen is a source for the Drug  
17 Enforcement Administration. I worked tirelessly. I turned  
18 over reports, documentation, search warrants with the Special  
19 Agent who was in charge of operating, Christopher Wilson, Your  
20 Honor. And me and these agents came to the conclusion that we  
21 believe, Your Honor, that all of the right players were in that  
22 house and that there was money in that house. Whoever got out  
23 of the back door with it escaped with the money or we could not  
24 find it. The agents were more concerned with Christopher  
25 Wilson conducting narcotics transactions without them knowing

1 about it. I worked tirelessly with them, Your Honor. I  
2 vividly remember five to six, what do you call them, conference  
3 calls with agents, with Special Agents, with group supervisors  
4 and with my bosses, Your Honor.

5 Nicholas Simmons, Your Honor, that recording and the  
6 way it's been presented to the Court today, Your Honor, is  
7 taken out of context. I actually, Your Honor, felt bad for  
8 Nicholas Simmons. I actually liked him and I felt bad for  
9 him -- it goes back to my emotional EQ -- because he was thrust  
10 into a role at 20 years old by his father to be the Mexican --  
11 to deal -- to be the direct connection to the Mexican cartel, a  
12 21-year-old. I wanted nothing more than to get him out of that  
13 line of work. I believe that if you recall the tape properly,  
14 I told Arthur Leavells, I offered him a legitimate way out, and  
15 he turned it down. I said there's no way he would have been  
16 indicted if he would have worked with me and gave up Alex, the  
17 supplier out of Southgate, but instead, Your Honor, he turned  
18 me down.

19 I went to the deputy chief of Management Services  
20 Bureau named Benjamin Lee. I had Nicholas Simmons approved for  
21 \$1.4 million bonus payment, which dwarfs the payment of Gary  
22 Jackson, 1.4 million if he would have gave up the Sinaloa  
23 cartel, and he looked me in my face, Your Honor, and told me he  
24 needs 10 million, and that's when we went our separate ways.  
25 But I really felt bad for Nicholas Simmons because he was just

1 a kid and he had no choice. He couldn't tell his father no.  
2 He was thrust into that world.

3 Your Honor, those were some of my proudest  
4 accomplishments. Those are things that I wore and I looked at  
5 as a -- somewhat of a protection. I always looked at the fact  
6 that if I ever got investigated or if I ever got looked into,  
7 that people would look at my record and see that I don't have  
8 any complaints. They would look at how transparent that I have  
9 always been with any federal agents.

10 Your Honor, I don't know if Agent Christopher Hess is  
11 here or not. Me and Agent Christopher Hess worked a case out  
12 of East Detroit with a Lawrence Montgomery who was prosecuted  
13 right in this business -- right in this building and he got  
14 18 years. I would have took a bullet for Agent Hess and any  
15 agent that I worked with.

16 And these things, Your Honor, have been turned  
17 against me and I'm really heartbroken about it.

18 Your Honor, for eight city cops, seven police  
19 officers and one sergeant, to effectively have intercepted  
20 money from a Sinaloa cartel, and on two occasions, Your Honor,  
21 was one person away from the Sinaloa cartel, that's without any  
22 wiretaps, Your Honor, that's without any federal grand juries.  
23 That is from hanging out at clubs like the Ace of Spades and  
24 jewelry shops like Zeidman's and Guchason's (sic) at Northland,  
25 running plates, hanging around, writing plates down, hard

1 boots-on-the-ground, pencil-and-paper police work to get to the  
2 level where you have effectively disrupted the Sinaloa cartel,  
3 and you were -- at two times, Your Honor, I was one person away  
4 from the Sinaloa cartel, Your Honor. It's unheard of for a  
5 city police department, especially one as cash-strapped as the  
6 City of Detroit, it's unheard of, Your Honor, and I wore those  
7 things as badges of honor.

8 Your Honor, you had an opportunity to see my  
9 finances. And although, Your Honor, I was not a millionaire or  
10 I wasn't making a quarter of a million dollars a year, Your  
11 Honor, I made enough money to sustain my lifestyle. My  
12 roommate is here today. I lived with a former Wayne County  
13 sheriff, Your Honor, and I paid \$1,200 a month for rent. We  
14 split it \$600 down the middle, and I had a \$60 phone bill, and  
15 that was my overhead. The place I stay in, Your Honor, had --  
16 I was lucky enough, had no gas payment and no electric. That  
17 was my overhead, Your Honor. I had no girlfriend, I was  
18 single, and I had no children.

19 Some years, Your Honor, I made almost \$150,000, and  
20 in saying that, Your Honor, I was able to accumulate things.  
21 To make that kind of money as a police officer, Your Honor, you  
22 have to work so much. Some years I doubled and/or tripled my  
23 salary. What comes along with that, the collateral that comes  
24 along with that, Your Honor, is I missed every birthday party,  
25 not some, I missed every one. I missed every Thanksgiving

1 dinner. I missed every Christmas dinner. I missed every  
2 baseball game. And I did it, Your Honor, not for the money but  
3 for the love of police work, for the love of the game, so I did  
4 it. The money was a fringe benefit that came along with it,  
5 but I did it for the love of police work and for the love of  
6 the game.

7 And the one silver lining that has come out of this  
8 for me is I've learned to appreciate my family more, to learn  
9 them more, to believe in them more, to have them around me  
10 more, and to strengthen my relationship with God. Because I'm  
11 ashamed to admit, Your Honor, police work was first in my life,  
12 before God, before family, before children, before parents. I  
13 was just one of those people. I was a -- I was just a  
14 policeman and that's the only thing that was important to me.

15 Your Honor, standing in front of you today, I still  
16 represent myself as a law enforcement professional, even though  
17 that may be hard to believe. I give you some examples or maybe  
18 you can deduce that for yourself. Your Honor, I remember days  
19 where I would get to court, I would get to court early because  
20 the first day I was late and it upset you, so I would make  
21 sure, Your Honor, I was the first one in court. And, Your  
22 Honor, sometimes I would see Ms. -- Ms. Koch or Ms. Couch (sic)  
23 coming off of the elevator, Your Honor, carting a big cart of  
24 evidence, Your Honor, that she was putting in this courtroom to  
25 put me in prison, and you know what I would do as a law

1 enforcement professional, Your Honor? I would run down here  
2 and I would hold those doors open for her and I would hold  
3 these galley doors open for her so she could get her evidence  
4 to prosecute me in this courtroom because I'm a law enforcement  
5 professional.

6 Since I've been suspended, Your Honor, I spent my  
7 time tutoring young police officers and young sergeants. I  
8 tutored about a group of 20, and, Your Honor, I am proud to say  
9 that every member that I tutored has either been promoted to  
10 the rank of sergeant or lieutenant or are eligible to be  
11 promoted to the rank of sergeant or lieutenant. And I did that  
12 free of cost because I still care about the future of the  
13 Detroit Police Department and it becoming better and the  
14 legitimacy of the Detroit Police Department.

15 When a police officer is shot or injured, Your Honor,  
16 I'm the first person on the phone calling to make sure he's  
17 okay. I'm the first person sending condolences, Your Honor. I  
18 still carry myself as a law enforcement professional.

19 And I think the most dynamic of them all, and I think  
20 the -- this Court will agree, is the people that took this  
21 stand and testified against me, Your Honor, the drug dealers,  
22 the people that cooperated, the people that turned on me so  
23 they could get out of jail early, the people that made up all  
24 of these false testimony about me, Your Honor, I live with  
25 their secrets every day. I've never went and broadcasted

1 anything in the newspaper. I've never got on T.V. and outed  
2 any of these people. I live with their secrets, Your Honor,  
3 secrets that would definitely put them in jeopardy and danger  
4 and in peril. But I live by a creed, believe it or not, Your  
5 Honor, and that creed and that integrity will not allow me to  
6 expose the many things, the sensitive information that they  
7 share with me about their close friends and their close  
8 relatives who they were informing on that would definitely,  
9 Your Honor, get them hurt or put their lives in jeopardy. I've  
10 never shared one thing. I take those secrets to me -- with me  
11 to bed every night, Your Honor.

12 THE COURT: Okay.

13 DEFENDANT HANSBERRY: Your Honor, as I close out  
14 here, I'm asking for a sentence, Your Honor, quite candidly,  
15 that does not require incarceration. Your Honor, I've lost  
16 everything: my career, my reputation, relationships, hardships  
17 with my family and significant financial damage. Your Honor, I  
18 had accumulated nice things and I had a pretty nice life for  
19 myself as a young basically executive in the police department.  
20 I had the lifestyle that came with it. I had a nice condo, I  
21 had a nice vehicle, I had money in the bank. You know, I  
22 wasn't stressed out, I wasn't living check to check. You know,  
23 I had opportunities. I was saving to purchase a home and  
24 extend my family. I was planning to get married. Your Honor,  
25 now I own a bed, a television, a couch and a Honda CRV that has

1 200,000 miles on it.

2 Your Honor, I believe that winning nine out of ten  
3 counts was a victory to some sort, but I believe being  
4 convicted of one hurts me and has broken my heart. I never  
5 thought, Your Honor, through this entire trial -- I sat in this  
6 courtroom, Your Honor, and I stayed there at this table and I  
7 listened to people say unimaginable things and come up with  
8 unimaginable amounts of money, Your Honor, and I sat there and  
9 I respected this courtroom, I respected those witnesses, and I  
10 acted and behaved like a true gentleman and a true law  
11 enforcement professional for five and a half weeks. I never  
12 thought, Your Honor, for one minute that I would be convicted  
13 of a crime. I thought people would apply logic and see through  
14 a lot of these things, Your Honor, and that's a surprise, Your  
15 Honor.

16 Last but not least, and this probably will come as a  
17 surprise to the Court, to the prosecution and to the defense, I  
18 wanted to ask you for leniency for Arthur Leavells. Your  
19 Honor, I failed Arthur Leavells, and that is the truth. I was  
20 his leader, I was his supervisor, and when he started to show  
21 signs that his loyalty was to Gary Jackson and not the police  
22 department, I remember the exact moment and the exact day. It  
23 is when Fred Tucker and Gary Jackson placed a fake kilo of  
24 cocaine, and he wanted a \$5,000 bonus payment and I refused to  
25 give it to him because it was a fake kilo of cocaine.

1           Arthur Leavells left my crew, Your Honor, within  
2     three weeks, and now looking back on it, I understand what that  
3     was. That was he was choosing Gary Jackson over me and over  
4     the police department, and I failed him because I should have  
5     pushed, I should have talked to him, I should have tried to  
6     reconcile, I should have pushed hard for him to be removed from  
7     the Narcotics Enforcement Section.

8           But, Your Honor, I looked at it cavalier and said  
9     he's not my problem anymore, him or Gary Jackson, and I'm going  
10    to continue with my crew and we're going to continue to pursue  
11    big drug dealers. And in overlooking that, Your Honor, I  
12    failed him as his leader. I should have not allowed him to  
13    continue to fester or to grow in that relationship that he had  
14    with Gary Jackson, or at least I could have made it very  
15    uncomfortable to the point where he had to choose being a  
16    police officer or being involved with Gary Jackson.

17           Although Mr. Leavells did not truth -- testify  
18    truthfully here, Your Honor, I ask on my behalf that when he  
19    comes before your court, you give him leniency because he was a  
20    man following a leader, and his leader had all of the  
21    indications and all of the signs that he was on a slippery  
22    slope and I didn't give him a pole or a life raft or anything  
23    to pull him up from that slippery slope.

24           Thank you for letting me revisit certain things in  
25    the case. I know you certainly know the case and you didn't

1 want to hear them again, but I appreciate that, Your Honor.

2 And I respectfully, Your Honor, request for a  
3 departure, Your Honor. I've already secured a apprenticeship  
4 with a heating and cooling company that I can start working  
5 with if I am not incarcerated. They will take me in as an  
6 apprentice and I can start heating and cooling.

7 Your Honor, I haven't given up on the system. I  
8 still believe in the criminal justice system all the way  
9 through the appeals court and all the way through the Supreme  
10 Court, Your Honor. And I would love one day to return to  
11 police work or become a lawyer myself, Your Honor, and play on  
12 the higher level and to represent and provide robust defense  
13 for people who come in the criminal justice system on the  
14 defense side of the table, Your Honor.

15 Any consideration, Your Honor, goes without saying  
16 would be more than greatly appreciated. It would give me a  
17 chance to reconcile my life, to pick up some pieces, to start  
18 over and to be a productive member of society. I believe I  
19 have a lot of equities to offer and a lot of unique  
20 experiences, and I believe I can change lives and affect lives,  
21 Your Honor.

22 Thank you very much.

23 THE COURT: Okay. Thank you very much. I appreciate  
24 all those words and the spirit that under -- underlied them and  
25 they're very helpful to the Court. Thank you again, Mr.

1 Hansberry.

2 Of course, the government has the right to make  
3 remarks on behalf of the United States as to any factors in  
4 sentencing or other matters I should consider. I read the  
5 entire government's Sentence Memorandum and exhibits as well.  
6 Mr. Buckley, go right ahead if you'd like to now.

7 MR. BUCKLEY: Thank you, Your Honor. I appreciate  
8 that. May it please the Court, and thank you for letting me be  
9 heard.

10 I don't always speak at sentencings, Judge, but in  
11 this particular case I feel compelled, and I feel compelled to  
12 respond to the comments of counsel and to Mr. Hansberry.

13 Now, at the risk of injecting a small amount of  
14 levity into the proceedings, there's one thing that I will  
15 agree with Mr. Hansberry on, and that's that Mrs. Koch is the  
16 hardest working person at the U.S. Attorney's Office.

17 Now, Judge, Mr. Harrison asked the Court to vary  
18 downward based on Mr. Hansberry's health and security concerns.  
19 I respectfully suggest to the Court that the Bureau of Prisons  
20 will accommodate those concerns, and a variance should not be  
21 granted on those bases.

22 Mr. Harrison also talked about the good that Mr.  
23 Hansberry had done while he was a police officer. Judge, in  
24 response, the crime with which Mr. Hansberry was convicted,  
25 which was, without question, the single most serious count in

1 the indictment, was not reflective of an isolated instance of  
2 bad judgment, it wasn't a mistake. It was a years-long  
3 conspiracy, it was calculated, it was well thought out, and he  
4 was the leader.

5           You know, Mr. Hansberry said to the Court that his  
6 true interest was in -- was in protecting others. I think even  
7 Mr. Hansberry would agree with me that drug trafficking is one  
8 of the most serious problems that the City of Detroit faces.  
9 Drug trafficking has been a plague upon the City of Detroit for  
10 at least decades, Judge. Drug trafficking is the root of  
11 hundreds of homicides. Drug trafficking is the motive for  
12 countless assaults, robberies and carjackings. It has  
13 Detroit's hospitals -- filled hospitals, it's destroyed  
14 families. It has decimated entire neighborhoods with the same  
15 efficiency as a nuclear blast.

16           And what's ironic, Judge, is who would know that  
17 better than Mr. Hansberry himself? Based on the experience  
18 that he outlined for this Court, he was out there every day, he  
19 was running and gunning, he was investigating drug traffickers,  
20 he was talking to them, he was doing undercover work, et  
21 cetera, et cetera, et cetera.

22           It is ironic, Judge, given how harmful drug  
23 trafficking is, that Mr. Hansberry did what he did to find  
24 himself in this situation today because, Judge, Mr. Hansberry  
25 took an oath and he swore to fight drug trafficking. He

1 violated that oath, Judge, for his own personal enrichment. He  
2 made that badge he talked about a badge of shame. He brought  
3 shame upon himself, his department and that badge, and he did  
4 it for his own personal enrichment. And the evidence at this  
5 trial showed, Your Honor -- again, this wasn't an isolated  
6 instance. The evidence showed that he stole drugs and that he  
7 agreed to steal drugs for his personal enrichment, and for his  
8 enrichment, he agreed to steal over a million dollars in drug  
9 proceeds.

10 And the Court heard how he did it. He talked about  
11 employing deception legitimately as an undercover cop, but his  
12 deception was not limited to his dealings with suspected  
13 criminals. Mr. Hansberry employed deception by preparing,  
14 approving and filing false police reports, which willfully  
15 underreported or failed to report the amount or the fact of  
16 seizures of drugs and drug proceeds. He used fake or  
17 substitute kilos of cocaine to place on evidence to substitute  
18 for the actual drugs that were seized and sold by him and his  
19 co-conspirator and others. And he also used fake search  
20 warrants, Judge. He made a mockery, a mockery of the justice  
21 system; fake search warrant with a forged judge's signature on  
22 it, bogo warrants.

23 Your Honor, the fact is that he, worst of all, failed  
24 to arrest kilo eight drug dealers that he caught red-handed.  
25 Those may include Nick Simmons. He talks about Nick Simmons.

1 When Nick Simmons' house was raided, Nick Simmons said he had  
2 \$300,000 in drug proceeds there and guns and a quantity of  
3 drugs. Did Mr. Hansberry arrest him? No, he didn't arrest  
4 him.

5 There was testimony by Mr. Simmons that Mr. Hansberry  
6 pressured him and nagged him to set up rip-offs of others, and  
7 the nagging was so bad, Mr. Simmons in the end placed kilos and  
8 cash in an abandoned house pursuant to Mr. Hansberry's  
9 instructions so Mr. Hansberry could retrieve them, and Mr.  
10 Simmons said he sat out and watched Mr. Hansberry go to that  
11 abandoned house and pick up the drugs and money.

12 So my point is, Judge, that as a sworn narcotics  
13 officer, this defendant, these defendants had an obligation, a  
14 sworn duty to take drugs off the street and, more importantly,  
15 Judge, even more importantly, to take drug dealers off the  
16 street. Mr. Hansberry agreed to allow drug dealers that he  
17 caught red-handed to be released to set up rip-offs of other  
18 drug dealers or to sell the drugs that was stolen by the  
19 defendants.

20 Now, Mr. Hansberry talked at length about Gary  
21 Jackson and he talked about the recording that was made. I  
22 think it's important to note the irony here, Judge, because  
23 Gary Jackson only recorded that meeting because the defendants  
24 stole from him. They had promised him \$300,000 off the top  
25 plus a reward of \$500,000, and he had to go to his own lengths

1 to make sure that he got the premium payment, which was  
2 \$250,000 in cash, when that meeting was recorded. But it's  
3 ironic, if -- if Mr. Hansberry and Mr. Watson hadn't cheated  
4 Jackson, they'd all still be out there doing this, without  
5 doubt.

6 Now, one thing Mr. Hansberry said too was that he put  
7 all these drug dealers in prison. There were several that he  
8 didn't, Judge: Nick Simmons, Louis Mars, Gary Jackson, Lamont  
9 Calhoun. With regard to Mr. Simmons, Mr. Mars and Mr. Jackson,  
10 those gentlemen were all arrested, investigated and prosecuted  
11 and convicted by the feds; by ATF, by DEA, by the FBI. It was  
12 Mr. Hansberry who chose to let them continue to operate with  
13 impunity in the city and put those drugs back out on the street  
14 and sell kilos of drugs in this city.

15 So, Your Honor, pursuant to Section 3553 and the  
16 factors enunciated therein, we're asking the Court to consider  
17 the gravity of the offense, the seriousness of the offense, the  
18 need to promote respect for the law and the need to deter  
19 others because this crime was about greed and -- and it was  
20 about betrayal. And I respectfully suggest to this Court that  
21 Mr. Hansberry stole money out of greed, but worse than that, he  
22 betrayed his badge, his oath, his department, the citizens of  
23 the City of Detroit and all other honest law enforcement  
24 officers who risk their lives every day. For those reasons,  
25 Judge, we ask for a sentence at the high end of the guidelines.

1           THE COURT: All right. Thank you very much, Mr.  
2 Buckley. All right. And thanks to both lawyers, as always,  
3 for their extremely hard work on this particular matter.

4           I'm going to talk a little bit about the 3553(a)  
5 factors, I'm going to state the sentence, and then I'll give  
6 the attorneys for both sides a final chance to make legal  
7 objections to it before it's imposed, and then we'll go from  
8 there.

9           I'd be, you know, remiss if -- if I didn't start by  
10 saying that these types of cases, both in the courtroom and in  
11 the community, rise an enormous amount of passion, and I think  
12 the -- the -- the passion, the frustration, the anger is  
13 palpable when you look both at the letters that I've seen  
14 and -- and -- and some of the other materials in the file.

15           I think it's my obligation to be dispassionate about  
16 the sentence and to make the -- the most informed decision that  
17 I can as to the sentence based on the law and the facts that  
18 came before the Court.

19           Obviously Mr. Hansberry has never been convicted  
20 previously. We balance that with the fact that he was a law  
21 enforcement officer who had a decorated career and, by his  
22 testimony this morning, is obviously an appealing personality  
23 with a desire to -- to have done his job properly and to  
24 have -- and to have served the public as he was sworn to do.

25           I viewed the case, quite honestly, as one in which

1 the government proved Count 1 beyond a reasonable doubt.  
2 There -- there were tapes, there were financial incentives,  
3 there was an entire IRS/financial aspect to the case that I  
4 really believe demonstrated that the defendant, notwithstanding  
5 his strong personality, his -- his good efforts and his noble  
6 ideas, for some reason bought into the idea that doing a few of  
7 the acts that were laid out in the indictment and demonstrated  
8 at trial would enrich him somehow, and I -- I don't think  
9 there's any -- any question that the financial motives and the  
10 acts of the defendant, in conspiracy with others, were  
11 calculated to violate the extortion laws set forth in -- in  
12 Count 1.

13           There is overt statement in some of the letters that  
14 I've seen from some of the public officials in the file and  
15 some hint of that in other places that the acts of the federal  
16 government in prosecuting or investigating this case were,  
17 quote, vindictive. I read that word in at least one of the  
18 letters that I read. I think those -- those thoughts are --  
19 are dangerously mistaken.

20           And being as dispassionate as possible, I think what  
21 we have here is not a situation that should anger the community  
22 on behalf of -- of the defendant or cause anger on the -- from  
23 the community in light of suggestions of vindictiveness, but --  
24 but I think we see a great deal of regrettable, unimaginable  
25 and -- and, frankly, sad conduct by an individual who had

1 reached the top of his profession. And -- and why, I don't  
2 know, but what I do know was a violation of the extortion law  
3 beyond a reasonable doubt.

4 Now, the sentence guidelines are provided to me by  
5 Congress. I don't sit here and make up a sentence. I am  
6 suggested that the range of a sentence of this sort should be  
7 155 to 181 months. I diligently worked through all of the  
8 enhancements to be as fair and restrictive as I -- as I could,  
9 and my legal judgment is that that is the -- is that that is  
10 the appropriate sentence in the case.

11 I don't find any basis for a variance. I don't find  
12 any basis for a departure upward or downward. The fact of the  
13 matter is that when any police officer violates the law and  
14 then violates the law in the sort of manner that's been  
15 demonstrated by the United States in this particular case, it  
16 causes mistrust in the public, it causes those in the law  
17 enforcement profession to be downgraded in their eyes, and  
18 it -- it -- it -- it may cause other individuals to think about  
19 crossing the line for their own personal gain. So in terms of  
20 punishment of this crime as well as a deterrent to help others  
21 not engage in this sort of behavior, I believe a guideline  
22 sentence is -- is -- is -- is authorized.

23 Now, the letters, by and large, without question, ask  
24 for leniency, and I do believe that Mr. Hansberry's entitled to  
25 leniency because I think at core he's probably a well-intended

1 individual who committed criminal activity for reasons that  
2 can't be imagined by the Court, and I think concerns of reform  
3 and -- and I think that concerns of general deterrence,  
4 leniency and things of that nature would support a -- a low  
5 sentence within the guidelines, and those would be my ration --  
6 that -- that would be the rationale for the sentence that I  
7 intend to impose.

8 Therefore, pursuant to the Sentence Reform Act of  
9 1984, the Court, having considered the sentence guidelines and  
10 factors laid out in 18 USC, Section 3553(a) that I just went  
11 over, hereby commits the defendant David Hansberry to the  
12 custody of the U.S. Bureau of Prisons for a term of 155 months.

13 Upon release from imprisonment, the defendant shall  
14 be placed on supervised release for two years.

15 It's further ordered that the defendant pay a special  
16 assessment of a hundred dollars. That will be due immediately.

17 I will waive the imposition of a fine, the cost of  
18 incarceration, the cost of supervision. That's all due to the  
19 defendant's lack of financial resources.

20 Drug testing will be suspended because I've  
21 determined that the defendant poses a very low risk of future  
22 substance abuse.

23 And while on supervision, the defendant shall abide  
24 by the standard conditions adopted by the U.S. District Court  
25 for the Eastern District of Michigan.

1           That will be the sentence of the Court. Objections  
2           from Mr. Buckley?

3           MR. BUCKLEY: No, just the objections that have been  
4           preserved previously. Thank you, Your Honor.

5           THE COURT: Okay. Thank you.

6           Objections that you haven't previously stated, Mr.  
7           Harrison?

8           MR. HARRISON: No, Your Honor, no prev -- none that  
9           weren't previously stated.

10          I would like to address remand if the Court would  
11          allow it.

12          THE COURT: Okay. That's fine and I appreciate that.  
13          We'll get to that in a minute.

14          The sentence that the Court stated earlier will be  
15          imposed after the statements of counsel that they have no  
16          further objections.

17          Mr. Hansberry, you have the right to appeal, and that  
18          includes the right to appeal your sentence in the case. Any  
19          Notice of Appeal that you want to file in the case must be put  
20          on the docket within 14 days of the entry of judgment in the  
21          case or within 14 days of the filing of a Notice of Appeal by  
22          the United States. If requested, our clerk will prepare and  
23          filed a Notice of Appeal on your behalf.

24          If you can't afford to pay the costs of an appeal or  
25          for appellate counsel, you have the right to apply for leave to

1 appeal in forma pauperis. That means you can apply to have the  
2 Court waive the filing fee. On appeal, you can also apply for  
3 court-appointed counsel.

4 Mr. Buckley in his papers asked the Court to remand  
5 the defendant for immediate service of his sentence. Mr.  
6 Harrison has objected to that. My general sense, based on  
7 everything I see, including the contact I've had with Pretrial  
8 Services, indicates that this individual would not be a -- a  
9 risk of flight from the community. Granted, he is convicted of  
10 a serious felony and sentenced to a long term of prison, but I  
11 have no hard and fast evidence of any sort that would lead me  
12 to believe that he's a -- a danger to the community.

13 I would then be inclined to order his report for  
14 service of his sentence, but I would certainly allow Mr.  
15 Buckley and Mr. Harrison to be heard further on that if they  
16 want to. Mr. Buckley?

17 MR. BUCKLEY: Thank you, Your Honor.

18 It's not in every case that I seek remand at  
19 sentencing, but I think, again, this is a -- this is a very  
20 serious offense, it's a very serious case. The -- the jury  
21 verdict was returned, oh, about seven months ago. I  
22 respectfully submit that Mr. Hansberry's had adequate time to  
23 get his affairs in order.

24 Judge, there's an old axiom, "Justice delayed is  
25 justice denied." But with regard to the Bail Reform Act

1 factors, I suggest that there now has been a material change of  
2 circumstances. Mr. Hansberry's been convicted for months, but  
3 he's now been sentenced to a lengthy term of incarceration. It  
4 would give him added incentive to flee.

5 I believe the testimony of the IRS Agent Kevin Nalu  
6 during trial was that not all of the stolen drug proceeds were  
7 accounted for. There -- there may be financial wherewithal for  
8 him to flee.

9 But more importantly, Judge, is the danger to any  
10 person in the community. Now, one of the clips that we were  
11 going to play today, and I don't need to play it but I'm going  
12 to tell Court that in talking to Mr. Leavells on September 7th,  
13 2014, Mr. Hansberry said that if Louis Mars, who was currently  
14 incarcerated in Kentucky and who testified at that case, showed  
15 up on his porch, he was going to kill him. He said, "I'd shoot  
16 him, I'd kill him," and then he used some expletives.

17 But in any event, Judge, it's our position that at  
18 this time he should be remanded to serve his sentence.

19 THE COURT: Okay. And -- and just so you know,  
20 without playing the tape, I did receive the entire transcript  
21 as -- as Exhibit B to your Sentencing Memorandum. That was  
22 laid out in your Sentence Memorandum and I -- I did -- I did  
23 read those words. So I appreciate your position on that.

24 You want to respond, Mr. Harrison?

25 MR. HARRISON: Thank you. Briefly, Your Honor.

1           Your Honor, we all met Louis Mars. If Louis Mars  
2 showed up on my doorstep, I would be concerned for the safety  
3 of my family and myself. I -- I think perhaps that was taken  
4 out of context.

5           But, Judge, I think the most telling factor here is  
6 the fact that upon conviction, the government did not object to  
7 a continuance of Mr. Hansberry's personal bond. He's shown up  
8 at every hearing. He retained counsel. He hasn't moved. He's  
9 shown up to Pretrial Services. He hasn't had any violations  
10 reported by Probation. He's not a risk to the community. He's  
11 not a risk of flight. He's -- I understand there's a concern  
12 over hidden money. I'd certainly like to know where it is.  
13 But I don't believe he's got the wherewithal.

14           But more importantly than that, Judge, he's just  
15 demonstrated to us that he's -- he's not going anywhere, and I  
16 would suggest to this Court that a remand at this point, you  
17 know, would serve no interest other than perhaps a public  
18 spectacle.

19           THE COURT: Okay. I -- I have faith in -- in Mr.  
20 Hansberry. I honestly believe that he honestly believes that  
21 the evidence against him was insufficient, and I think he's  
22 more likely to appeal or contest his conviction within  
23 traditional manners rather than by -- by fleeing. I would  
24 cert -- certainly hope so.

25           Nevertheless, I will remind Mr. Hansberry that your

1 release conditions will continue apply -- to apply, the release  
2 conditions that the magistrate judge previously put you on.

3 You will be ordered to report for service of your  
4 sentence in the future. If you don't report for it, that's a  
5 separate criminal offense that you could be prosecuted under.  
6 The statute on that is 18 USC, Section 3146.

7 So I'll -- I'll -- I'll not order immediate  
8 detention, but I will remind the defendant of those  
9 obligations.

10 Both parties have copies of the Pre-Sentence Report.  
11 Amended copies that reflect all corrections and resolutions of  
12 disputed issues will be decided today. Complete corrected  
13 copies will be prepared for the Bureau of Prisons and the  
14 Sentencing Commission, and any other copies should be kept  
15 confidential as is the practices of the district.

16 Now, I expect an appeal here, and when that's taken,  
17 counsel on appeal will be able to look at the Pre-Sentence  
18 Report, but counsel will not be permitted to access the  
19 recommendations section, which is a longstanding local rule  
20 that we have.

21 With that, I would say to the defendant straight up  
22 this is, you know, extremely difficult for the Court to do and  
23 I take no pleasure. I -- I've done the best I can, and I  
24 hope -- I hope that the sentence and the entire process will  
25 help you get back on your feet. I think you have a lot to

1 offer. And I do thank the lawyers for their spirited  
2 litigation which was helpful in arriving at what I perceive to  
3 be the most just sentence that I could impose.

4 It's 12:25. We'll take a 10 to 15-minute break and  
5 we'll come back and hear from Mr. Fishman and Mr. Buckley on  
6 Mr. Watson's case, so we'll be in a short recess now.

7 THE CASE MANAGER: All rise.

8 MR. HARRISON: Thank you, Your Honor.

9 THE CASE MANAGER: Court's now in recess.

10 (Court in recess at 12:26 p.m.)

11 (Proceedings resumed at 12:49 p.m., all parties  
12 present)

13 THE CASE MANAGER: Court is now back in session.

14 THE COURT: Okay. Everybody may be seated.

15 You -- you can stay there, but Mr. Harrison notified  
16 my clerk who notified me that I wanted to give the bottom of  
17 the guidelines, and I -- I got ahead of myself and stated a  
18 sentence of 155 months when the bottom is actually 151. I  
19 meant to state 151 months. The judgment will reflect that.  
20 And it was a simple mistake that I think is corrected by this  
21 colloquy as well as what we state in the judgment. So it was  
22 a -- you know, whatever the spoken version of a typographical  
23 error would be, okay? So we'll -- we'll --

24 MR. HARRISON: Thank you, Your Honor.

25 THE COURT: All right. Thank you both. Anything

1 else from either --

2 MR. BUCKLEY: No. Thank you, Your Honor.

3 THE COURT: Okay. Very good.

4 MR. HARRISON: No, Your Honor. May we --

5 THE COURT: All right. Thank you both.

6 MR. HARRISON: May we be excused, Your Honor?

7 THE COURT: You're -- yeah, absolutely.

8 (Proceedings concluded at 12:50 p.m.)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 83 comprise a full, true and correct transcript of the excerpt of proceedings held in the matter of United States of America vs. David Hansberry, Case No. 15-20217, on Wednesday, February 22, 2017.

s/Linda M. Cavanagh  
Linda M. Cavanagh, CSR-131, RPR, RMR, CRR  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: February 27, 2017  
Detroit, Michigan